

STUDENTS'
BENGAL TENANCY ACT.

Students' Companion Series No. 2.

STUDENTS' BENGAL TENANCY ACT

With Notes, University Questions and
Answers, Etc.

NEW SIXTH EDITION.—1929.

BY

H. N. BANERJEE, M.A., B.L..

University Gold-Medalist & Prizeman ; Ritchie Prizeman, Prasanna Kumar
Tagore Law Scholar & Author "Students' Companion Series."

CALCUTTA :
M. C. SARKAR & SONS | EASTERN LAW HOUSE.
18, College Square.

Price Rs. 2/4.

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Printed by Hrishikesh Ghosh at The **RUDRA PRINTING WORKS**,
7 Gour Mohon Mukherjee Street and published from 12, Simla Street, Calcutta,
by R. M. Chatterjee, for Mrs. S. B. Banerjee, Sole Proprietrix, "Students'
Companion Series."

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PREFACE TO THE SIXTH EDITION.



The following pages contain a complete and systematic analysis of the Bengal Tenancy Act (VII of 1885) as amended by Act IV of 1928 with short explanatory comments and important case-laws thereon. The book is mainly intended for the use of the B. L. students of the Calcutta, Dacca and Patna Universities and has been written on the plan of the Author's "Indian Law of Limitation" and the "Indian Law of Evidence" which have, within a short time, acquired a wide popularity amongst the students. To enhance the usefulness of the work, the University questions of the last 30 years (1900-1929) have been given in the margin while their answers have been incorporated in the body of the book with a view to direct the attention of the students to portions demanding special care for purposes of examination. The appendices contain comparative tables of the various incidents of the different classes of tenancies dealt with in the Act and of the different sale laws.

In the preparation of this book the Author has received much valuable assistance from the well-known commentaries on the Bengal Tenancy Act by Messrs. V. Roy, S. C. Sen, Rampini, Finucane and Mitter & Mukherjee respectively and to all of them he feels greatly indebted.

In this edition the book has been thoroughly revised and brought up to date. Some portions of the book have been completely rewritten and enlarged.

Calcutta. }
October, 1928.

PUBLISHER.

THE BENGAL TENANCY ACT:

Act VIII of 1885:

(As modified by Act IV of 1928)



CHAPTER I.—Preliminary. (Ss. 1-3)

Commencement of the Act—The Bengal Tenancy Act came into force on the 1st November, 1885. [S.1(2)].

Note.—But, by Act XX of 1885, the operation of Sections 61-64 and Chapter XII of the Act, except such of their provisions as confer power to make rules, was postponed to the 1st of February, 1886.

Local extent of the Act—The Bengal Tenancy Act extends by its own operation to the whole of Bengal, except—

- (i) Calcutta, that is to say, the area described in Schedule I to the Calcutta Municipal Act, 1923, but excluding the area added to Calcutta as defined in clause (1) of S. 3 of that Act ;
- (ii) (a) the area added to Calcutta as defined in clause (1) of S. 3 of the Calcutta Municipal Act, 1923, or any part thereof, and
(b) any area or part of any area included in Calcutta by notification under sub-sec. (3) of S. 543 of that Act,
if such area or part is specified in a notification made in this behalf by the Local Government ;
- (iii) lands other than agricultural lands situated within any area constituted a municipality under the

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provisions of the Bengal Municipal Act, 1884, or part thereof, if such area or part is specified in a notification made in this behalf by the Local Government ; and

(iv) the scheduled Districts specified in Part III of the First Schedule to the Scheduled Districts Act, 1874 :

Provided that no notification shall be issued under clause (ii) or clause (iii) of this sub-section, unless—

(a) it is previously published in the area concerned or part thereof in the prescribed manner ; and

(b) the Bengal Legislative Council by a resolution recommends that the notification be issued. [S.1(3)].

Note.—This sub-section was substituted for the original sub-section (3) by the Bengal Tenancy (Amendment) Act, IV of 1928. The original sub-section (3) of Section 1 stood as follows :—The Bengal Tenancy Act “shall extend by its own operation to all the territories for the time being under the administration of the Lieutenant-Governor of Bengal, *except* the town of Calcutta, any area constituted a municipality under the provisions of the Bengal Municipal Act (III of 1884), or part thereof, and specified in this behalf by a notification by the Local Government ; the Division of Orissa and the Scheduled Districts, specified in the third part of the first Schedule of the Scheduled Districts Act (XIV of 1874) ; and the Local Government may with the previous sanction of the Governor-General in Council, by notification in the local official Gazette, extend the whole or any portion of the Act to the Division of Orissa or any part thereof. *Explanation.*—The words ‘the town of Calcutta’ mean, subject to the inclusion or exclusion of any local area by notification under S. 637 of the Calcutta Municipal Act, 1899, the area described in Schedule I to that Act.” 1ⁿ

the new sub-sec. (3) references to areas outside the 'Province' have been deleted and the areas to which the Act does not apply have been definitely mentioned. In clause (ii) of the new sub-section, reference is made to the areas which have been added or may be added to Calcutta under the present Municipal Act, 1923 ; but it has been made clear that the Bengal Tenancy Act does not cease to apply to such areas or to the areas of other municipalities unless a special notification has been made to that effect.* The Proviso, however, requires previous publication of the intention of Government and a resolution of the Bengal Legislative Council before the issue of any such notification. The effect of clauses (i) to (iii) read with the Proviso is that the Act will not apply to Calcutta *minus* the added area ; but it will apply (i) to the added area and (ii) to any area that may be added hereafter and (iii) to all other municipal areas in Bengal, unless there has been a notification by the Local Government excluding the operation of the Act from such area. The issue of such a notification will be subject to the conditions mentioned in Proviso (a) and (b). (Mitter & Mukherjee, 9-10) The object of clause (iii) is "to make it clear that the Bengal Tenancy Act should continue to apply to all agricultural areas in municipalities even when they happen to be excluded from the operation of the Act under this section. As it at present stands, the B. T. Act applies to all agricultural lands. As the Government reserve to themselves the power of withdrawing the operation of the Act from any municipal areas, it is right and proper that there should be a clause protecting the rights of cultivating raiyats in municipal areas. The right of occupancy was created for the benefit of the cultivating raiyats and there is no reason why those in municipal areas should be deprived of their rights. Those who are aware of the nature of the municipal areas of mufassal know perfectly well that there are extensive agricultural areas in mufassal municipalities and it would be rather cruel if, by any notification, the Local Government

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make the raiyats of those areas in mufassal municipality part with their valued rights."

Clause (1) : "Calcutta"—The Bengal Tenancy Act has never been extended to the town of Calcutta. But the Act, as at first enacted, excluded from its operation only the town of Calcutta as it stood at the time of the passing of the Act. The Act, therefore, would apply to those areas which had been included within the town of Calcutta, subsequent to the passing of the Act. (27 Cal. 202). But by virtue of an Explanation added to the Section by Act I (B. C.) of 1907, the Act did not apply to the area which was not originally within the town of Calcutta but which was subsequently included within the limits of the Calcutta Municipality. The effect of the Explanation was thus to exclude the Act from the whole of the Calcutta Municipal area. The addition of the Explanation, however, had no retrospective operation so as to affect any right which had already been required. Thus, where a tenant, before the passing of the Bengal Act I of 1907 acquired a non-occupancy-raiyati-interest in certain lands in the suburbs of Calcutta, and which were subsequently included within the Municipal limits of Calcutta, it was held that the status of the tenant was not affected by the addition of the Explanation by Act I (B. C.) of 1907. (20 C. W. N. 258). Now by virtue of clauses (i) and (ii) of the new sub-sec. (3) the Act applies to any area that has been or may hereafter be added to, or included in, Calcutta unless there has been a notification by the Local Government excluding the operation of the Act from such area. (See *supra*).

Rent-law of Calcutta—In the town of Calcutta the relations between landlords and tenants are governed by the provisions of the Indian Contract Act (IX of 1872), so far as they are applicable. If they are not applicable, then, by Sec. 17 of 21 Geo. III. C. 70, all matters of contract and dealing between party and party shall be determined in the

case of the Mahomedans by the law and usages of the Mahomedans, and in the case of the Hindus by the law and usages of the Hindus, but where one of the parties is a Mahomedan or a Hindu, by the law and usages of the *defendant*. If the provisions of the Contract Act are inapplicable and the parties are English, then the Common Law of England will apply (22 W. R. 370 ; 3 Cal. 688 ; 8 Cal. 582).

"Any area constituted a municipality etc."—The provisions of the Act are intended to apply to agricultural areas and are unsuitable to such municipalities of portions thereof as are mainly urban in character.

"Specified in a notification etc."—No notification has yet been published by the Local Government exempting any municipal area from the operation of this Act. So this Act applies to municipal areas in the mofussil.

Orissa—Before the enactment of the Orissa Tenancy Act (II of 1913) certain portions of the B. T. Act were extended to the Division of Orissa. Now, the Orissa Tenancy Act II (B. & O. C.) of 1913 is the law in force in Orissa.

Scheduled Districts—These are :—(1) The Jalpaiguri and Darjeeling districts ; (2) The Hill tracts of Chittagong ; (3) The Santhal Parganas ; (4) The Chota-Nagpur Division ; and (5) Angul. Under Secs. 5 and 6-A of the Scheduled Districts Act, the Bengal Tenancy Act may be extended by the Local Government to any of the Scheduled Districts or any part thereof and accordingly the Act has been extended to some of the Scheduled Districts (See *infra*).

District of Jalpaiguri—Subject to certain exceptions, restrictions and modifications the Bengal Tenancy Act has been applied to the Jalpaiguri district.

Santhal Parganas.—The Santhal Parganas Regulation III of 1872 as amended by Regulation II of 1886 and Regulation II of 1904 is the law in force. Certain portions of the Act [e.g. Ss. 56, 58 (1), 58 (3) to 58 (8) as amended by

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Act I (B. C.) of 1907 and S. 84] also apply to the Santhal Parganas.

Chota-Nagpur Division—This comprises the districts of Hazaribagh, Manbhum, Palamau, Ranchi and Singhbhum. Before the passing of the Chota Nagpur Tenancy Act (VI of 1908) certain portions of the Bengal Tenancy Act were extended to certain parts of Chota Nagpur Division. Now, the Chota-Nagpur Tenancy Act is the law in force.

District of Darjeeling—Act X of 1859 as amended by Acts VI (B. C.) of 1862 and Act IV (B. C.) of 1867 is in force in the Darjeeling District. (*Vide* Bengal Code).

Assam.—Act VIII (B. C.) of 1869 is in force in the district of Sylhet and Goalpara.

Behar—This comprises Bhagalpur, Munghyr, Purnia, Gaya, Patna, Shahabad, Champaran, Darbhanga, Muzzafarpur and Saran Districts. The B. T. Act (VIII of 1885) as amended by Bengal Act I of 1907 and Behar and Orissa Acts IV of 1914, III of 1916, I of 1918 and IX of 1920 is the law in force in Behar.

Nature and Scope of the Act—The Act was passed with a view to amend and consolidate *certain* enactments relating to the law of landlord and tenant within the territories under the administration of the Lieutenant-Governor of Bengal. (Preamble).

What do you think is the object underlying the B.T. Act? Do you think that it is a complete and exhaustive Code? Illustrate your answer by reference to any leading case?

B. L. 1929(a).

"Law of landlord and tenant."—The Bengal Tenancy Act, as its Preamble shows, is an Act relating to the law of landlord and tenant and therefore its provisions are applicable only in those cases in which the parties stand in the relation of landlord and tenant. It is not the design of the Act to deprive a tenant of the rights that he otherwise possesses against a third person between whom and himself there is no relationship of landlord and tenant. It is only intended to deal with such rights as exist between landlord and tenant. (20 C. W.

N. 872 at p. 874).* The provisions of the Act are further restricted to lands held for agricultural (and horticultural) purposes only and do not apply to non-agricultural lands e.g. land leased for building purposes or for the establishment of a coal depot. (19 Cal. 489 : 19 C. W. N. 35, 241 ; 22 C. W. N. cxvi). See notes under heading "Land" under S. 3, sub-sec. (17) *infra*.

The relation of landlord and tenant arises : (1) where it has been expressly created by a contract valid according to the law in force at the time of executing the contract ; (2) where it is reasonably implied from the acts of the parties, e.g. where a cultivator occupies the land of a landlord with his express consent and is allowed to remain in occupation of the land ; and (3) where it has been created or continued by operation of law e.g. when a proprietor succeeds in a suit for resumption of *lakhiraj* created after 1st December, 1790, the relation of landlord and tenant is created between him and the holder of the invalid *lakhiraj*.

"Certain enactments".—These words indicate that the Bengal Tenancy Act does not contain the whole law of landlord and tenant in Bengal. It is, as its Preamble shows, intended to amend and consolidate not the *entire* law of landlord and tenant but only *certain* enactments relating to that law, so that it is not a complete code. (29 Cal. 54 ; 48 Cal. 184 at p. 244.) "The Bengal Tenancy Act does not purport to be a complete code even in respect of the landlord and tenant ; much less, does it profess to incorporate the general principles of the law of contract and the doctrines of equity jurisprudence in so far as they may have to be applied in

* See also 49 C. L. J. 122 : "The preamble of the Act shows that it presumes to amend and consolidate the law relating to landlord and tenant. It was, therefore, beyond its scope to deal with the law as between tenant and a third party. The Bengal Tenancy Act does not (for example) invest the occupancy raiyat with any particular right as against a third party nor does it take away any right which he may have under the general law." (*Ibid* p. 126, *per* Suhrawardy, J.)

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the determination of disputes between landlords and tenants." (44 Cal. 771 at p. 729; 35 Cal. 34 at p. 52.) For instance, the Act nowhere purports to give an exhaustive enumeration of all the incidents of occupancy right (48 Cal. 134 at p. 244; 49 C. L. J. 122 at p. 126). Other enactments containing provisions as to landlord and tenant which are in force in Bengal, are :—(1) the Mesne Profits and Improvements Act (XI of 1855); (2) the Opium Act (I of 1878), Ss. 4, 5, 9, 11, 22; (3) the Transfer of Property Act (IV of 1882), Ch. V; (4) the Cantonments (House-accommodation) Act (VI of 1923) and (5) the Code of Civil Procedure (V of 1908), Ss. 4 & 5.

"Within the territories.....of Bengal"—This includes the present Presidency of Fort William in Bengal, and other territories. The Bengal Tenancy Act (VIII of 1885) by its own operation, extended to the whole of the Province of Bengal (as it was before the creation of the Province of Eastern Bengal and Assam), except the town of Calcutta, the Division of Orissa and the Scheduled Districts. Since the creation of the Province of E. B. and Assam, the rent-law applicable to the Districts which sometimes formed part of the said province but was subsequently re-transferred to Bengal, namely the Dacca, Rajshahye and Chittagong Divisions, was contained in the Bengal Tenancy Act as amended by Act I. (E. B. C.) of 1908. The Bengal Tenancy Act, as amended by Act I (B. C.) of 1907, was in force in Western Bengal comprising the Presidency and Burdwan Divisions, and in Behar, comprising Bhagalpur, Monghyr, Purnea, Gaya, Patna, Shahabad, Champaran, Darbhanga, Muzzafarpur and Saran districts. Now, the B. T. Act as amended by Act IV of 1928 is in force in both the East and the West Bengal. The Act as it stood before the amending Act IV. of 1928 is still in force in Bihar. (*See supra*).

Write a short
note on the
subsequent

Short history of the Act.—The Act embodies an endeavour to redeem a pledge that was given at the time of

the Permanent Settlement. The authors of that Settlement defined and ascertained the mutual rights of the State and the revenue-payers or Zemindars. But they did not settle, define or ascertain the mutual rights of the Zemindars and the raiyats. The legislature of 1793 contented themselves by only reserving to the Government, the right to legislate, when necessary, for the protection of the persons having interest in the soil below those of the Zemindars.* But more than half a century elapsed before any steps were taken to assert this right and to discharge the obligation. The first serious attempt in that direction was made by Act X of 1859 which introduced important changes in the substantive law of landlords and tenants. But it was far from being a success, its chief defect being that it placed the right of occupancy (which it recognised in the raiyats) and the right to enhance the rent (which it recognised in the landlords) on a precarious footing. In 1869, an Act (VIII of 1869 B. C.) was passed repealing Act X 1859 but even this did not much improve the situation; and "the period from 1870 downwards was marked, on the one hand, by the incessant efforts of the landlords to obtain higher rents and illegal *abwabs* and on the other by a determined opposition of the tenants to demand which they conceived unjust, and either party wherever it was the stronger one, had succeeded to nullify the just rights of the other. Thus while there was undisputed evidence of oppressive conduct and illegal exaction on the part of the Zemindars in Western and Southern

legislation for the protection of the raiyats foreshadowed in Act VII, cl. I of Reg. I of 1793. B. L. 10 (b). What was the effect, immediate or otherwise, of the provisions of Regs. I & VIII of 1793, upon the relation between the Zemindars and the raiyats? State briefly the complications and causes that led to the passing of the B. T. Act. B. L. 12 (a). What was the chief defect of the Settlement Regulations? What consequences followed therefrom and what attempts were made and when, to remedy this defect?

B. L. 15 (a).

* "It being the duty of the ruling power to protect all classes of people and more particularly those, who from their situation, are most helpless, the Governor-General in Council will, whenever he may deem it proper, enact such Regulations as he may think necessary for the protection and welfare of the dependant Talukdars, raiyats and other cultivators of the soil; and no Zemindar, independent Talukdar or other actual proprietor of land shall be entitled, on this account, to make any objection to the discharge of the fixed assessment which they have respectively agreed to pay." (Reg. I of 1793, Sec. 8).

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Bengal, there had been combination of raiyats in Eastern Bengal refusing to pay any rent except what *they* considered just. The disturbances, which, in 1873, broke out in the Pabna District were an exceptionally acute form of the latter kind. The cultivators banded themselves to resist short measures, illegal cesses, and forced deliveries of agreements to pay enhanced rents." (Dr V. Ray's B. T. Act) Though the disturbances were put down with a strong hand, the enquiries which were made brought into very clear light the substantial character of the tenants' grievances and the need of a drastic remedy and the Government came to believe that it was necessary to pass a law which would thoroughly protect the raiyats and make him—what he is now only in name—a freeman, a cultivator with the right to cultivate the land he holds, provided he pays a fair rent for it. Accordingly in 1879, a Rent-Law Commission was appointed with instruction to prepare a digest of the existing statute and case-law relating to landlord and tenant and to draw up a consolidating Bill. Accordingly a Draft Bill was prepared and submitted to the Governor-General in Council and passed into law as Act VIII of 1885, the present Bengal Tenancy Act. Since its passing, the Act has undergone various important amendments, but the principles on which it was founded have remained unaltered and the object of all the amendments made, has, throughout, been to give fuller effect to those principles.

Definitions.—Unless there is something repugnant in the subject or context, the following words shall have the following meanings :—

(1) "**Agricultural year**"—means the Bengal year commencing on the 1st of Baisakh : Provided that where, immediately before the commencement of the Bengal Tenancy (Amendment) Act, 1928 any other year has prevailed for agricultural purposes that year shall continue to prevail for those purposes until the 1st day of Baisakh next following the date of the commencement of the Act.

Note.—This definition was substituted by B. T. (Amendment) Act, IV of 1928 for the former clause (11) which stood as follows :—“Agricultural year means, where the Bengali year prevails, the year commencing on the 1st day of *Baisakh*, where the *Fasli* or *Amlī* year prevails, the year commencing on the 1st day of *Assin*, and where any other year prevails for agricultural purposes, that year”. The new clause defines the agricultural year as the Bengali year with a view to make the year uniform throughout Bengal for the purposes of this Act. This year is in force throughout Bengal, except in a part of Midnapur and Chittagong. The proviso makes the time of the commencement of this clause to be 1st Baisakh, 1336 B. S. corresponding to the 14th April, 1929, in Chittagong and those parts of Midnapur where the Bengali year was not so long prevalent. The month of Baisakh corresponds with the last part of April and the first part of May.

This is an important definition. Ejectment takes place from the commencement of the agricultural year (S. 46) ; arrears of rent fall due and interest run thereon, from the last day of each quarter of such year (Ss. 53, 67) ; tenants are entitled to receive discharge or account at its end (S. 57) ; surrender or abandonment takes effect after the expiration of the agricultural year (Ss. 86, 87) ; and enhanced rent and rent settled under Chapter X also take effect from the beginning of such year. (Ss. 110, 154).

The *Bengali* year prevails in Bengal, the *Fasli* year in Behar, the *Amlī* or *Vilayti* year in Orissa and parts of Midnapur and the *Maghi* year in Chittagong.

Where the term “Year” is used by itself, the year of the British Calandar must be understood.

(2) “**Collector**”—means the Collector of a district or any other officer appointed by the Local Government to discharge any of the functions of a Collector under this Act.

(3) “**Complete usufructuary mortgage**”—

means a transfer by a tenant of the right of possession in any land for the purpose of securing the payment of money or the return of grain advanced or to be advanced by way of loan upon the condition that the loan with all interest thereon, shall be deemed to be extinguished by the profits arising from the land during the period of the mortgage.

Note.—This definition was inserted by the Bengal Tenancy Amendment Act, 1928. This clause defines for the first time in the present Act the expression "Complete usufructuary mortgage" which occurs in several places in the amended Act.

(4) "**Estate**" means land included under one entry in any of the general registers of revenue-paying lands and revenue-free lands, prepared and maintained (under the law for the time being in force) by the Collector of a district, and includes Government *khas mahals* and revenue-free lands not entered in any register.

plain the
in "estate,"
L. 1891.

Note.—For other definitions of "Estate" see Act VII (B. C.) of 1865, S. 1 and Act VII (B. C.) of 1876, S. 3 (2). The distinctive features of the definition of estate given in this Act are that revenue-free lands (which are not estates according to the aforesaid two Acts) are included and that *khas mahals* and revenue-free lands not entered in any Register are also included. (Mitter & Mukherjee, 16).

Under Section 4 of the Land Registration Act (Bengal Act VII of 1876, as amended by Bengal Act I of 1906) the Collector of every district is bound to maintain registers of revenue-paying and revenue-free lands, which include, or ought to include, all revenue-paying and revenue-free lands in the district, all lands occupied for public purposes by the Government or public bodies, and all unassessed or waste lands. An estate under the Bengal Tenancy Act means so much of any of these lands as is included under one entry in any of these registers.

Estates mean the interests just below the permanent interest which Government has in the land. In the case of *khas*

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mahal both the paramount and the subordinate interests coincide. Independent taluks (call *hazuri* or *khariju* taluks) created at the time of the Permanent Settlement which pay revenue direct to Government are 'estates'; not so, however, are subordinate (*shikmi* or *maskuri*) taluks, which pay revenue through the Zemindar. A *patni* taluk is, therefore, not an 'estate' but a 'tenure'.

"Includes Government khas mahals".—These words make it clear that the substantive provisions of the Act, apply to the tenants on Government estates just as much as to those on ordinary Zemindari estates.

Khash mahals.—A *khas mahal* is an estate held by Government standing in the place of the proprietor. Sometimes there is no proprietor, as in the case of waste land or an island thrown up in a large navigable river. Sometimes there is a proprietor who has refused to accept the terms of settlement offered to him and who is allowed *mulikana* while the estate is held *khas*. Estates held *khas* are sometimes managed by Government through its own servants and sometimes let out in farm or *ijara* (field).

"Revenue-free lands not entered in any register"—Though revenue-free lands ought generally to be entered in the Collector's general registers, it happens that they are not, in fact, always so entered. It is provided in the present sub-section that revenue-free lands that are not in fact registered shall, for the purpose of this Act, be regarded as estates.

(5) **'Holding'** means a parcel or parcels of land or an undivided share thereof, held by a *raiyyat* or an under-*raiyyat* and forming the subject of a separate tenancy.

Explain the term "holding."
B. L., 1911 (P. L., 1906, 1911.

Note.—This definition was substituted by Act IV of 1928 for the former clause (9) which stood as follows:—"Holding means a parcel or parcels of land held by a *raiyyat* and forming the subject of a separate tenancy." Under the old clause, the land held by an under-*raiyyat* was not a holding.

So also an undivided share in a parcel, or parcels of land was not a holding within the meaning of the Act under the old clause. By the B. T. amendment Act IV of 1928, the definition of "Holding" has been amended so as to extend it to under-raiyats and also to include an undivided share of a parcel or parcels of land provided it formed the subject of a separate tenancy. "We have amended the definition of holding so as to extend it to an undivided shares of a parcel or parcels of land because in numerous cases such undivided shares form separate tenancies and the failure of the law to recognise them as separate holdings had led to many practical difficulties" (Select Committee's Report).

Jote—Ordinarily the term "Jote" means a holding though not necessarily an occupancy holding. (32 C. W. N. 587).

(6) "**Landlord**"—means a person immediately under whom a tenant holds, and includes the Government.

Note.—Persons concerned with land may be divided generally into rent-receivers and rent-payers. The rent-receivers are landlords and rent-payers are tenants, under this Act. Any person to whom rent is payable is a landlord in relation to the person who pays rent to him, though he may himself be a tenant in relation to some third person. A landlord may be either a proprietor, a tenure-holder or a raiyat. A proprietor is the owner of an estate or share of an estate. He may sublet his estate or a share of it to a tenure-holder, in which case he is the landlord of the tenure-holder or he may manage his estate himself, in which case he is the landlord of the raiyats who hold the land directly under him. Similarly, a tenure-holder may sublet his tenure to a subordinate tenure-holder in which case the former is the landlord of the latter. Or if a tenure-holder manages his tenure himself, he is the landlord of the raiyat who hold

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under him. A raiyat who sublets his holding or part of it to an under-raiyat is the land-lord of the under-raiyat. The term "landlord" includes a person who on the extinction of other rights comes into direct relationship with the tenant or the under-tenant, as the case may be. (17 C. W. N. 781).

Assignee—A person to whom the land, the rent for which is claimed, as also the arrears of rent are transferred is an assignee of the whole interest of the landlord and is a "landlord" within the meaning of this Act. (7 C. L. J. 425). Not so however, is the assignee of the arrears of rent only. (4 C. W. N. 605).

Co-sharer landlord—The word "landlord" in this Act means either the *sole* landlord or *all* the co-sharer landlords together. Under this Act, therefore, a cosharer landlord has not the same rights and privileges as the sole landlord has and anything which a landlord is, under the Act, required or authorised to do must be done by all the co-sharers together or by an agent duly authorised to act on behalf of all of them. "Subject to the provisions of (new) Sec. 148 A [and also of the provisions of (new) Proviso to S. 188 (1)] where two or more persons are joint landlords anything which the landlord is under this Act required or authorised to do must be done either by both or all those persons acting together, or by an agent authorised to act on behalf of both or all of them." [(New) S. 188 (1)] Sec. 148-A (new) provides that a cosharer landlord may institute a suit to recover the rent due to him in respect of *his* share in a tenure or holding, by making all the remaining co-sharer landlords parties defendants to the suit [in manner provided in sub-secs. (1) and (2) of (new) S. 148-A and giving them an opportunity of joining in the suit as co-plaintiffs] and claiming that relief be granted to him in respect of his share of the rent against the entire tenure or holding, [Prior to Act IV of 1928, a co-sharer landlord could not bring a suit for rent if he did not make the other

What are the rights and disabilities of a co-sharer landlord under B. T. B. L. 13 (1) P. L. 1911, 1907.

A, B and C are joint landlords. A wants to bring a suit for enhancement of rent against the common tenant. B and C refuse to join with A. Is A alone competent to bring the suit against the tenant making B and C defendants to the suit? Give reasons. B. L. 1914 (1) See p. 18

co-sharers parties defendants or did not prove a right to collect his share of the rent separately. (31 Cal. 707). A suit by a co-sharer landlord for *his* proportionate share of the rent could not be maintained under the old law when there was no contract under which the tenant was bound to pay his share separately, although the other co-sharer landlords were made defendants in the suit. (6 C. W. N. 327) Under the present law, a co-sharer landlord can bring a suit for arrears of rent due to him alone, making the other co-sharers parties defendants. See (new) S. 148-A above. The section does not, however, prevent a co-sharer landlord from bringing a suit for the whole rent of the tenure or holding by making his co-sharers, who refuse to join as plaintiff, parties defendants. A right to bring such a suit arises out of the general principles of legal procedure, independently of the B. T. Act. (17 Cal. 390 F. B. ; 35 Cal. 331 P. C.) Sec. 148-A (new) makes no distinction between a co-sharer landlord who has a right to collect his share of the rent separately and one who has not. It enables a co-sharer landlord to sue for his share only of the rent and obtain a decree which will be as effectual as a decree obtained by a sole landlord or the entire body of landlords together by following the procedure laid down in the section. Under the old section 148-A to entitle a co-sharer landlord to recover his share only of the rent it was necessary that a co-sharer should sue to recover the rent due to all the co-sharer landlords in respect of the entire tenure or holding and that he must state that he was unable to ascertain what rent was due for the whole tenure or holding or whether the rent due to the other co-sharers had been paid or not owing to the refusal or neglect of the tenant or the co-sharer landlords defendants to the suit to furnish him with correct information on those points or on either of them. In other words, the suit should be in form for the whole rent and in substance for the plaintiff's separate share of rent in arrears and the whole body of landlords were impleaded with the allegation

that the plaintiff had not been able to ascertain what, if any, rents were due to the former. (Mitter & Mukherjee, 516)]. The (new) Proviso to S. 188 (1) provides that one or more co-sharer landlords, if all the other co-sharer landlords are made parties defendants to the suits or proceeding in manner provided in sub-secs (1) and (2) of Section 148-A and are given the opportunity of joining in the suit or proceeding as co-plaintiffs or co-applicants, may (i) file an application to Court to have the transferred holding retransferred to the landlord under S. 26 F (1) or to recover the balance of the landlord's transfer-fee under S. 26 J. (2) ; (ii) bring a suit for enhancement of the rent of a tenure under S. 7 or of a holding under S. 30 or for additional rent on account of increased area under S. 52 ; (iii) bring a suit for ejectment of a permanent tenure holder on the grounds specified in S. 10 or of a raiyat at fixed rate on the grounds specified in cl. (b) of S. 18, or of an occupancy-raiyat on the grounds specified in S. 25 or of a non-occupancy-raiyat under clauses (a), (b) or (c) of S. 44 or of an under-raiyat under Ss. 48C and 66 ; (iv) make applications as regards improvement under Ss. 78, 80 and 81 ; (v) apply for measurement under Ss. 90 and 91 ; (vi) file an application under S. 105 ; (vii) bring a suit under S. 106 ; (viii) apply for record of private lands under S. 118 ; (ix) apply for the determination of the incidents of a tenancy under S. 158 ; (x) apply to the Collector for a declaration that any land has ceased to be a *chur* or *daru* land under Sub-sec. (3) of 180. In the above matters a co-sharer landlord may, since the enactment of Act IV of 1928, bring a suit or make an application, as the case may be, in respect of his share of the tenure or holding, by making the other cosharers parties defendants to the suit or proceeding and giving them an opportunity of joining in the suit or proceeding as co-plaintiffs or co-applicants. Prior to the enactment of Act IV of 1928, a co-sharer landlord could not bring a suit or bring an application in the matters mentioned above, even if his other

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co-sharers were joined as (*proforma*) defendants or opposite parties to the suit or proceedings; all the landlords must join as co-plaintiffs or co-applicants. "In cases where S. 188 applies, the fact that the plaintiff joins his co-sharers as *proforma* defendants does not justify the Court in entertaining the suit on principles of justice and equity." (22 C. W. N. 685). Thus, prior to Act IV of 1928, it was held that a co-sharer landlord could not maintain a suit for enhancement of rent, even making the other co-sharers parties defendants in the suit. (17 Cal. 605; 25 Cal. 917; 38 Cal. 270; 19 C. W. N. 260). It should be observed, however, that S. 188 applies only to such matters as a landlord is *under the Act authorised or required to do*. Thus, even prior to Act IV of 1928, a co-sharer landlord could bring a suit for the whole rent due from a tenant, making his co-sharers, who refused to join as plaintiffs, parties-defendants in the suit. (14 Cal. 201, 203 notes; 35 Cal. 774). Similarly, he could maintain a suit for damages for value of trees improperly cut down and appropriated by a tenant or for compelling a tenant to fill up a tank which he had improperly excavated or in the alternative for damages, making the other co-sharer landlords defendants in the suit. (2 C. W. N. 80; 15 C. L. J. 225; 16 C. L. J. 127). Such suits are not things which the landlord is, under the Bengal Tenancy Act, required or authorised to do. A co-sharer landlord is entitled to bring such suits, not by reason of any provision of the B. T. Act but under the general law. The following also have been held not to come within the meaning of the words "anything which the landlord is under this Act required or authorised to do" in S. 188;—(1) A suit for assessment for rent (22 C. W. N. 685); (2) A suit for apportionment of rent (27 Cal. 479); (3) Proceedings under S. 106 disputing an entry in a record of right (7 C. W. N. 400); (4) A suit by a co-sharer landlord who collects his share of the rent separately for recovery of arrears of rent due in respect of his fractional share (7 C.

L. J. 512 ; 16 C. W. N. 774} ; (5) Application under S. 51 on the basis of a separate kabuliyat* (35 Cal. 417) (6) Suits for ejectment (a) against a trespasser (21 C. W. N. 117, 124) or (b) against a tenant on breach of the condition of a lease (19 Cal. 541 ; 24 C. L. J. 40) or (c) against a transferee on the ground of unauthorised alienation ; (7) Suit for rent in respect of excess land which formed no part of the land originally let out. (13 C. W. N. 635 ; 4 C. W. N. 508) on the basis of a separate kabuliyat (19 Cal. 755 ; 25 C. L. J. 569 ; 7 C. W. N. 670 ; 33 I. C. 211).

(7) **"Pay," "payable" and "payment,"** used with reference to rent, include "deliver," "deliverable" and "delivery."

(8) **"Permanent Settlement"** means the Permanent Settlement of Bengal, made in the year 1793.

Note.—The words "Behar and Orissa" have been omitted from the definition by Act IV of 1928 as unnecessary.

The definition was inserted to make it clear that the expression "Permanent Settlement" whenever it occurs in the Act means the Permanent Settlement of Bengal, Behar and Orissa made in 1793 and not as regards any district or area subsequently settled, the permanent settlement of such district or area (*Vide* Rent Law Commission's Report, Vol. I, P. 14)

(9) **"Permanent tenure"** means a tenure which is heritable and which is not held for a limited time.

Note—A tenure is permanent under this Act, if it is heritable and not held for a limited time. The rent of a permanent tenure is not necessarily fixed. A tenure becomes

Explain the term "Permanent tenure." B. L. 1891 ; P. L. 1909.

* If one of the co-sharer landlords obtains a separate kabuliyat entering into separate contract for rent with the tenant, such landlord ceases to be a joint landlord with the other co-proprietors of the land. He becomes a joint owner and not a joint landlord and such a person is entitled to make an application for measurement of the land comprised in his estate under S. 1 B. T. Act. Sec. 188 does not apply in such a case. (35 Cal. 417).

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permanent—(a) by express provision of law : [*E.g. putni* and other similar *taluks.*] ; (b) by contract : [A grant containing the words “from generation to generation” or some such words clearly creates an absolute and hereditary *mukarari* tenure] ; (c) by custom : [The *howlas* and *nim-howlas* of Backerganj, the *jotes* of Rangpur and the *sarbarakari* tenure of Cuttuck are permanent and heritable by custom.] ; or (d) by course of dealing therewith. [Continuous payment of rent for about 100 years or the fact that the tenure actually descended from father to son raises the presumption that the tenure is permanent.]

A permanent tenure-holder has no right in the sub-soil unless expressly granted by the lease and the sub-soil made the subject-matter of the grant. (47 Cal. 95 ; 1921 Pat. 49).

(10) “**Prescribed**” means prescribed by rules made by the Local Government under this Act.

(11) “**Proprietor**”—means a person owning (whether in trust or for his own benefit) an *estate* or a *part of an estate*.

Note—Proprietors thus include (1) the owners of registered revenue-paying estates ; (2) the owners of registered revenue-free estate ; (3) the owners of unregistered revenue-free estate ; (4) Government as owner for its own benefit of the *Khas mahals* and (5) Government as owner in trust of estates owned by Wards under its care (Ray).

“**In trust**”—“Proprietor” thus includes, *Matwalis* of Mahomedan endowments, *Shebasts* of Hindu endowments etc.

(12) “**Registered**”—means registered under any Act for the time being in force for the registration of documents.

Note—For provisions relating to the registration of documents see Ss. 12, 17, 18, 26 C, 29, 43, 48 B, 86 (b), 87 (4), 161, 175 and 176 of this Act, Ss. 17—18, 49 and 50 of the

Registration Act, 1908 and Ss. 54, 59, 107 and 123 of the Transfer of Property Act, 1884.

(13) "**Rent**"—means whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant.

Explain the term "**rent**," B. L. 1891, 1911 (b); P. L. 1908.

In Secs 53-68 (both inclusive), 72-75 (both inclusive). Chapter XIV and Schedule III of this Act "**rent**" also includes money recoverable under any enactment for the time being in force as if it was rent

Note—The words and figure Chapter XII have been omitted from the definition by Act IV of 1928. This is consequential to the repeal of Chapter XII regarding distraint.

To constitute rent the payment must be—(1) either in money or produce, (2) lawful, (3) on account of the use or occupation of land held by the tenant and (4) payable to the landlord.

"**Lawfully**"—The payment must be lawful, *Abwabs* or impositions on tenants over and above the actual rent are not rent, for they are not *lawfully* payable (*Vide* Sec. 74).

"**Payable**"—Whatever a tenant may lawfully pay is not necessarily recoverable from him as rent. A sum may be lawfully *payable*, though not lawfully *recoverable*. A person succeeding to a permanent tenure, who has not given the Collector notice of such succession and paid him the landlord's fee cannot recover rent, but rent may be lawfully paid to him. (*Vide* sec. 16). The word "**payable**" has been defined in S. 3 (7) of this Act. It includes "**deliverable**." The definition does not say that it includes "**recoverable**." So a suit to recover damages or compensation for use and occupation is not a suit for rent, which must be "**payable**" or "**deliverable**." (Mitter & Mukerjee, 30).

"**In money or kind**"—The definition of rent in this Act excludes all others except rent *in money* and rent *in*

kind; and if anything else is reserved for the use and occupation of land it can be recovered only as *damages*. Services rendered for the use or occupation of land are not rent, for they are not "payable or deliverable in money or kind." The incidents of service tenure are not affected in any way by this Act. (See S. 181.)

"By a tenant to his landlord"—Payment of rent presupposes privity between the payer and the payee. The words "to the landlord" in the definition shows that if return is reserved to any other person except the landlord (*e.g.* to the superior landlord) this return is not rent and is, therefore, recoverable only as damages. (11 Cal. 221) Where a tenant agrees to pay a particular sum as rent to the superior landlord and the remaining sum to the landlord as profit, a suit for money payable to the superior landlord is a suit not for rent but for damages. (11 Cal. 221; 22 Cal. 680; 19 C. W. N. 174; 9. C. W. N. 95)* A stipulation in a lease by which the tenant (a *putnidar*) promises to pay a certain sum as Government revenue into the Collectorate is not *rent* within the meaning of this section, as it is not "payable to the landlord" but to a third person. (10 C. W. N. 201, P. C.) A person to whom the land, the rent for which is claimed, as also the arrears of rent are transferred is an assignee of the whole interest of the landlord and is a "landlord" within the meaning of this Act (7 C. L. J. 425.) Not so, however, is the assignee of the arrears of rent only and a suit for arrears of rents by an assignee from the landlord is not a suit for *rent* under the present Act; it is a suit for *debt* only; for rent under S. 3 (13) is whatever is payable by a *tenant* to his *landlord* and the assignee

* For a contrary view see 2 C. W. N. 455, 4 C. W. N. 3, 32 Cal. 972 and 21 C. W. N. 214 it has been held that a suit by a landlord against a tenant for recovery of a certain sum which the latter had agreed to pay to a third person on behalf of the former but which he had not paid, was a suit for rent and not for damages.

PRELIMINARY.

of the arrears of rents cannot have been the landlord of the tenant at the time the rents accrued. (4 C. W. N. 605) But when the assignee of the rent is also assignee of the whole interest of the landlord he stands in the shoes of the landlord and is a "landlord" within the meaning of this Act and consequently a decree obtained by him for the rent assigned is a decree for rent. (7 C. L. J. 425). On the contrary an assignee of the arrears of rent only from a landlord is not a person between whom and the tenant there is a relationship of landlord and tenant and a decree obtained by him for the rent assigned is consequently not a decree for rent. (4 C. W. N. 605). Under S. 148 (o) execution of a decree for arrears of rent cannot be taken out by an assignee, unless the landlord's interest in the land has become vested in him. A sale held at the instance of an assignee of a rent-decree who is not an assignee of the landlord's interest in the land has at most the effect of a sale held in execution of a decree for money under the Civil Procedure Code. (1 C. L. J. 500). "In the present Act the law is, as it was before it, that the landlord has a first charge for his rent, and a rent-decree, if assigned under Sec. 232, C.P. C., ceases to be a rent-decree and becomes only an ordinary civil demand recoverable under the Civil Procedure Code (*Per* O'Kinealy and Hill JJ., in *Dinonath v. Golapmohini*, 1 C. W. N. 183). But see 41 L. C. 542 (*Sudhyanya v. Gourjunga*) where Richardson and Walmsely JJ. have held, after a review of the authorities, that cl. (h) [now cl. (o)] of S. 148 forbids the assignee of a decree for arrears of rent to make any application to execute the decree, even as a simple decree for money under the Civil Procedure Code.

"On account of the use and occupation of the land"—*Patwari* or *Hisabana* dues are not rent, for they are not payable for the use or occupation of land; nor for the same reason, does a *Selami* paid by a lessee in consideration for a lease fall under the denomination of rent.

“**Money recoverable...as rent**”—These words include Road and Public Work Cesses payable under S. 47 and 64A of Act IX of 1886 (B. C.) and money payable under S. 74 of the Bengal Embankment Act (II B. C., of 1882) or under S. 42 (b) of the Bengal Drainage Act (VI of 1880). (8 C. W. N. 640) Cess is payable for all lands held by a raiyat whether he pays rent in money or in kind. (26 C. W. N. 368).

“**Distinction between rent and revenue**”—The term *revenue* is now understood to mean as a rule the amount which is paid by a *proprietor* to the State, while *rent* is the amount payable by a tenant to the person under whom he holds land whether as a raiyat or as a tenure-holder.

(14) “**Revenue-officer**”—in any provision of the Act includes any officer whom the Local Government may appoint, by name or by virtue, of his office, to discharge any of the functions of a Revenue officer under that provision.

Note—This definition was numbered as clause (17) originally.

(15) “**Signed**” includes “marked,” when the person making the mark is unable to write his name ; it also includes “stamped” with the name of the person referred to :

Note—This definition was numbered as clause (14) originally.

(16) “**Succession**” includes both intestate and testamentary succession :

Note—This definition was numbered as clause (13) originally.

(17) “**Tenant** means a person who holds land under another person and is, or but for a special contract would be, liable to pay rent for that land to that person :

Provided that a person who under the system generally known as “*adhi*,” “*barga*” or “*bhag*”, cultivates the land of another person on condition of delivering a

explain the
term
“tenant.”
I. L. 1891,
911 (a) ;
I. L. 1912,
908.

share of the produce* to that person, is not a tenant, unless—(i) such person has been expressly admitted to be a tenant by his landlord in any document executed by him or executed in his favour and accepted by him, or (ii) he has been or is held by a Civil Court to be a tenant

Note—This definition was numbered as clause (3) originally. The Proviso was newly inserted by Act IV of 1928.

"Holds land"—Tenancies are created (i) by valid contracts ; (ii) by acts and conduct of parties ; and (iii) by operation of law. (See Notes under heading "Law of landlord and tenant" at p. 6 *supra*.)

"Under another person"—Such person may be a trespasser having no right or title to the land.† The word "person" includes any company or association or body of individuals, whether incorporated or not. [16 C. W. N. 297 ; General Clauses Act, S. 3 (39.)]

"But for a special contract"—For instance, a contract creating a *jungli-buri* tenure exempting the tenant from payment of rent for a time, a contract creating a service tenure etc.

* E.g. half of whatever may be the actual produce in the year. Persons who cultivate the land of another person on condition of delivering a fixed quantity of produce (e.g. 4 maunds of paddy every year) are however "tenants" and will be "raiyaats" or "under-raiayats" as the case may be under the Act. (Mitter & Mukherjee, p. xxxv.)

† The mere fact that the person to whom a raiyat has for some years paid rent had no title or had no good title or that the title of such a person had come to an end can not take away from the holder the character of a raiyat. A raiyat's interest can be acquired by a cultivator who has held under a *defacto* proprietor : (17 W. R. 552 ; 3 Cal. 560 ; 17 Cal. 45 ; 20 Cal. 708 F. B. ; 17 C. W. N. 348 ; 19 C. W. N. 407) [For *contra* : see 31 Cal. 703 ; 34 Cal. 117 ; 21 C. W. N. 93 ; 19 C. W. N. 772 ; 46 C. L. J. 575] But the tenant must be holding *bonafide* and must not be in collusion with the person under whom he holds : otherwise he will be treated as a trespasser. (20 Cal. 708 F. B. ; 8 C. W. N. 315 ; 14 C. W. N. 681 ; 19 C. W. N. 772) The above rule, however, applies only to a cultivating raiyat and not to all classes of tenants. (29 Cal. 871, 878) [Mitter & Mukherjee's B. T. Act, pp. 45-46].

“**Liable to pay rent**”—It is the liability to pay rent and not the actual payment of rent which is necessary to constitute a tenancy. (A. I. R. 1923 Pat. 176). Mere non-payment of rent does not determine it. (7 W. R. 400 ; 4 Cal. 314, 661 ; 9 Cal. 808 ; 14 Cal. 349). A person who holds land on condition of paying or delivering something which is not rent, under the B. T. Act or on condition of rendering some service (manual or otherwise) is a tenant. So also is a person who under a special contract holds land rent-free or free of all liabilities of making any payment or delivery or rendering any service. (17 Cal. 721).

A tenant may be either a tenure-holder, a raiyat or an under-raiyat. (*Vide* Sec. 4) A tenure holder is the tenant of the proprietor or superior tenure-holder under whom he holds. A raiyat is the tenant of the proprietor or under-holder under whom he holds. And an under raiyat is the tenant of the raiyat or superior under-raiyat under whom he holds.

Bargadar.—See Proviso. The Proviso has for the first time given a legal definition to the term “bargadar.” Under it those bargadars who have been admitted by their immediate landlord in any document whether a patta, a kabuliyat or a plaint in a rent suit, are tenants ; also those who have been so declared in a civil suit. The Select Committee’s view that no class of produce-paying cultivators should be treated as tenants has been adhered to, but exception has been made in favor of persons already recognised as tenants by their landlords or by the Civil Court. This new provision will apply with retrospective effect even to those cultivators of this class who have been recorded in a record-of-rights as raiyats or under-raiyats. (Mitter & Mukherjee, p. xxxv.)

What is meant by the expression “land” under

Land.—There is no definition of the term “land” in this Act. In the course of the debate in Council on the provisions of the Bill, the Maharaja of Durbhanga proposed to

restrict the operation of this Act to land which is the subject of *agricultural or horticultural* cultivation or is used for purposes incidental thereto. But his proposed amendment to this effect was not accepted. But it seems clear that the Act applies to agricultural and horticultural lands only, but not to *non-agricultural* lands which come within the purview of the Transfer of Property Act. The provisions of the B. T. Act are not, however, restricted to such lands alone as are *actually* under cultivation but applies to all lands for agricultural purposes, (22 C.W.N. 550). Lands taken with a view to gather and store, thereon crops raised in adjacent lands actually cultivated by the raiyat is land used for agricultural purposes. (*Ibid*) Similarly, a lease of land as a yard for ploughing cattle or as a habitation for agriculturists or as a pasture for ploughing cattle or for the purpose of storing manure or growing plants to be used as manure will be a lease for agricultural purposes (24 Mad. 421) Where land is used for the grazing of cattle required for agricultural purposes, the holding is used for an agricultural purpose and a right of occupancy may be acquired therein ; but not so, where land is used for grazing of cattle required for avocation totally unconnected with agriculture (23 C. L. J. 638). The cultivation of indigo is an agricultural purpose but the manufacture of indigo-cakes out of indigo plants cannot be said to be an agricultural purpose. (31 Cal. 174, 9 C. W. N. 87). Lands held for horticultural purposes also are governed by the provision of the B. T. Act. (21 Cal. 129 ; 27 Cal. 205). [The term "horticulture" means the cultivation of a garden, or the science of cultivating or managing a garden, including growing flowers, fruits and vegetables. If a lease is for the purpose of gathering fruits from trees or the land the lease is not for horticultural purposes (17 C. L. J. 411)]. The Bengal Tenancy Act does not apply to homestead lands whether situated in towns or outside town (9 C. W. N. 141.) But the provisions of the Act are applicable to the homestead of a raiyat or under-raiyat in certain cases. See S. 182,

R. T. Act ?
B. L. 1891.

infra. But the Act does not properly apply to homestead land *not held by a raiyat or an under-raiyat*.

The Act does not apply to land let mainly for building purposes, or for bazars or ghats or for mining purposes or for quarrying or lands let in town for other than agricultural or horticultural purposes. (19 Cal. 489 ; 27 Cal. 205).

The fact that a portion of residential holding is planted with fruit-bearing trees does not alter the character of the holding and the case is governed by the Transfer of Property Act. (23 C. W. N. 378). Where a pleader purchased the homestead portion of an occupancy raiyat holding situated in a mofussil municipality and used it as his residence to carry on the profession of a pleader and the landlord recognised him as a tenant on payment of *salami* and enhanced his rent and used to grant receipt in the forms prescribed under the Bengal Tenancy Act, it was *held* that the tenancy was governed by the Transfer of Property Act and not by the Bengal Tenancy Act (26 C. W. N. 389).

What is meant by the term "tenure"?
L. L. 1891.

(18) "**Tenure**" means the interest of a tenure-holder or an under-tenure-holder.

Note—The following illustrations were given in the Draft Bill :—(a) A *putni* interest is a tenure. (b) An *ijara* or farm for a term of years, is a tenure. (c) A holds 120 *bighas* of valid revenue-free land, situated within the limits of B's revenue-paying estate, and not included under any entry in the General Register of Revenue-free lands maintained by the Collector of the district under the law for the time being in force. This land is in the actual possession of raiyats who pay their rents to A. The interest of A in such land is a tenure. (d) B, the proprietor of a revenue-paying estate makes a rent-free grant to A of 50 *bighas* of land, included in such estate and in the actual possession of raiyats. A, by virtue of such grant, becomes entitled to the rents payable by then raiyats. A's interest in these 50 *bighas* is a tenure.

"Tenure holder"—"Tenure-holder" is defined in Sec. 5, Sub-Sec. (1).

(19) **"Village"** means the area defined, surveyed and recorded as a distinct and separate village in—

- (a) the general land revenue survey which has been made of the Province of Bengal, or
- (b) any survey made by the Government, which has been adopted by notification in the Calcutta or Eastern Bengal and Assam Gazette or which may be adopted by notification in the Calcutta Gazette as defining villages for the purposes of this clause in any specified area ;

and, where a survey has not been made by, or under the authority of, the Government, such area as the Collector may, with the sanction of the Board of Revenue, by general or special order, declare to constitute a village :

Provided that when an order has been made under S. 101 directing that a survey be made and a record-of-rights prepared in respect of any local area, estate, tenure or part thereof, the Government may, by notification in the Calcutta Gazette declare that in such local area, estate, tenure or part thereof "village" shall mean the area which for the purposes of such survey and record-of-rights may be adopted by the revenue-officer with the sanction of the Board of Revenue accorded under the provisions of section 115A as the unit of survey and record. (S. 3)

CHAPTER II.—Classes of Tenants (Ss. 4-5).

Note.—This chapter describes the different classes of tenants with which the Act deals. Tenants are first divided into three main classes, *vis.*, tenure-holders, raiyats and under-raiyats. All tenure-holders are of the same class, though there may be any number of grades among them *e. g.* putnidar, darputnidar se-putnidar, chaharputnidar, etc., or talukdar, zimba-talukdar, shamilat-talukdar, oshat-

talukdar, etc. Raiyats, however, are of three classes, *viz.*, raiyats at fixed rates, occupancy raiyats and non-occupancy raiyats. But they are all of the same grade ; in other words, no raiyat may hold under another raiyat ; either the former must be called an under-raiyat or the latter must be a tenure-holder or a proprietor. Under raiyats again are all of the same class, though there may be different grades among them. There are thus altogether five classes of tenants ; (1) tenure-holders ; (2) raiyats at fixed rates ; (3) occupancy raiyats ; (4) non-occupancy raiyats and (5) under-raiyats. The incidents of the different grades of tenancies within the same class are the same ; but the incidents of the five classes of tenancies differ from one another and have been dealt with in the following five chapters. (Roy).

describe the
various classes
of tenants
under B. T. A.

L. 1902,
13 (b),
14 (a).

explain the
principle
of under-
tenancy and the classi-
fication of

tenants in the
B. T. Act.

U. 1921 (b).
What are the
effects of

changes of
tenants under
the Bengal

Tenancy Act?

1926(a),
18 (a).

What are the
different
classes of

tenants under
the B. T. Act?

L. 1920(a),
13(a), 25(b).

1. **Classes of tenants**—There are, for the purposes of the Bengal Tenancy Act, the following classes of tenants (namely) :—

(1) *Tenure-holders*, including under-tenure-holders.

(2) *Raiyats*, and

(3) *Under-raiyats*, that is to say, tenants holding whether immediately or mediately, under raiyats ;

and the following classes of *rai-yats* (namely) :—

(a) *Raiyats holding at fixed rates*, which expression means raiyats holding either at a rent fixed in perpetuity or at a rate of rent fixed in perpetuity ;

(b) *Occupancy raiyats*, that is to say, raiyats having a right of occupancy in the land held by them ; and

(c) *Non-occupancy-raiyats*, that is to say, raiyats not having the right of occupancy. (S. 4).

Note.—The classification here given is not exhaustive ;

for in addition to the classes of raiyats mentioned above, there

is also, under the Act, another class, *viz. Settled raiyats, i. e.,*

rai-yats who have for a period of 12 years held as rai-yats

lands situate in any village. (S. 20). Neither is the classification strictly logical; for a raiyat at fixed rent or rate of rent may also be an occupancy raiyat. (49 Cal. 280; 54 Cal. 681). "The classification of tenants in Ss. 4 and 5 was not intended to be scientific or precise." (44 I. C. 94).

A raiyat paying a fixed quantity of paddy as rent is a raiyat at fixed rent. (73 I. C. 416; 36 C. L. 220).

Tenants	(1) Tenure-holders.	(a) Tenure-holders.	What are the different classes of tenants dealt with under B. T. A. and what are the incidents of each class of tenancy? B. L. '13 (b). Explain the terms 'tenure holder,' 'occupancy raiyat,' 'non-occupancy raiyat' and 'under-raiyat' B. L. '10 (b).
	(2) Raiyats.	(b) (a) Raiyats at fixed rates. (b) { Occupancy raiyats. Settled raiyats.	Explain the distinction between a tenure-holder and a raiyat. B. L. '02, '13 (a), '14 (a) & (b), '18 (b), '23 (a); P. L. 1908. How do you distinguish between a 'tenure-holder and a raiyat? 1926 (a).
	(3) Under-raiyats.	(c) Non-occupancy-raiyats.	What are the tests by which you can say that a tenant is a tenure-holder or a raiyat? Can a raiyat change his status to that of a tenure holder and vice versa? B. L. '18 (b).

2. Distinction between tenure-holder and raiyat.—(1) "Tenure-holder" means primarily a person who has acquired from a proprietor or from another tenure-holder a right to hold land for the purpose of (i) collecting rents or (ii) bringing it under cultivation by establishing tenants on it, and includes also the successors in interest of persons who have acquired such a right.

(2) "Raiyat" means primarily a person who has acquired a right to hold land for the purpose of cultivating it by himself or by members of his family or by servants or labourers or with the aid of partners, and includes also the successors in interest of persons who have acquired such a right.

Explanation.—Where a tenant of land has the right to bring it under cultivation, he shall be deemed to have acquired a right to hold it for the purpose of cultivation, notwithstanding that he uses it for the purpose of gathering the produce of it or of grazing cattle on it.

(3) A person shall not be deemed to be a raiyat unless he holds land either *immediately* under a proprietor or *immediately* under a tenure-holder.

(4) In determining whether a tenant is a tenure-holder or a raiyat, the Court shall have regard to—

THE BENGAL TENANCY ACT.

- “ (a) local custom ; and
- (b) the purpose for which the right of tenancy was originally acquired.

(5) Where the area held by a tenant exceeds one hundred standard bighas, the tenant shall be presumed to be a tenure-holder until the contrary is proved (S. 5.)

Sub-sec.(1) : Tenure-holder—The definition of a tenure-holder is not exhaustive. The mere fact that a person has acquired from a proprietor or from another tenure-holder a right to hold land for the purpose of collecting rent is not sufficient to prove that he is a tenure-holder within the meaning of the B. T. Act. It must be proved that the land was let out for *agricultural or horticultural purposes* (27 Cal. 205). If agricultural or horticultural land be let out for the purpose of collecting rents, the lessee would be a “tenure-holder.”

“Primarily”—The occurrence of the word “primarily” in sub-secs. (1) and (2) clearly indicates that the description of “tenure-holder” and of “raiya” is not exhaustive. The Act *describes* rather than *defines* the distinction between a tenure-holder and a raiya.

Sub-sec.(2) : Raiya—The definition of a raiya in Sub-sec. (2) is not exhaustive. There is nothing in the Act to indicate that it was the intention of the Legislature to exclude from its operation horticultural lands. (11 Cal. 129.) This clause is intended, merely to distinguish a raiya from an under-raiya and does not necessarily require that the raiya should derive his title from the landlord or his predecessor-in-interest and not from any person who held adversely to the landlord and had no title in himself. When a person acquires a right to hold land *bonafide* from one whom he *bonafide* believes to have the right to let him into possession of the land, he is a raiya, although the person under whom he holds may be a trespasser. (*Binodlal v. Kala*, 20 Cal. 708 ; *Mahim a v. Hazari*, 17 Cal. 45) [But

right as a
raiya can be
acquired
under a
trespasser.

this ruling is based on the assumption that the tenant entered upon the land and held under a *defacto* proprietor who might not be the real owner, *in good faith*; when that element is wanting the rule laid down does not apply; for it is a general principle of law that no one can confer upon another person any right in property which is not his own. This is the general rule and cases like that of *Binodlal* are exceptions to the general rule (5 C. L. J. 9; 8 C. W. N. 315, 320) Want of good faith either on the part of the lessor or the lessee makes the rule in the case of *Binodlal* inapplicable (21 C. W. N. 93; 23 C. L. J. 563.) See notes under S. 3 (17) *supra*.

A person is not a raiyat who enters upon land subject to an agreement to be afterwards arrived at as to the rent etc. His possession is permissive or at most he is a tenant at will or by sufferance and he may be entitled to a reasonable time to remove his effects (23 C. W. N. 773)

Distinction between tenure-holder and raiyat :

—The distinction between a tenure-holder and a raiyat is drawn in this section from the original conception of a riyat that he enters on the land for the purpose of cultivating it or bringing it under cultivation by his own personal labour or by that of his servants or followers. The raiyat are those who are *bonafide* actual cultivators in the sense that they derive their profits from the produce directly and middle-men are those who have no connection with the produce excepting the receiving of the rents in cash or kind. (9 W. R. 579.) The true test to determine the question is to see in what condition the land was when the tenancy was created; if raiyats were already in possession of the land and the interest created was a right not to the actual physical possession of the land but to collect rents from those raiyats that is not a raiyati holding. (14 C. L. J. 38) If on the other hand, the land was jungle or uncultivated or unoccupied, and the tenant was let into physical possession of

What is the distinction between a Tenure holder and a Raiyat? 1925 (a).

Tenure-holders and raiyats are both tenants. What tests would you apply to distinguish one from the other? B. L. 1927(b). How do you distinguish a tenure holder and a raiyat. B. L. 1928(a), 1929 (b).

the land, that would be a raiyati interest, and the nature of his interest so created would not be altered by the subsequent fact of the tenant sub-letting to under-tenants. (9 C. L. R. 449.) This test, however, is neither exhaustive nor the only test. According to the definition of tenure as given in Sec. 5, if uncultivated land were let out for the purpose of being brought under cultivation by establishing tenants on it, then the mere fact that the land was jungle land or unoccupied at the time of the settlement would not make the person with whom the land was settled a raiyat instead of a tenure holder. (15 C. W. N. 218, 896.) Where more than 250 acres of land was leased to a man of means, a resident of another place, for the purpose of reclaiming the land and rendering it fit for cultivation, the agency to be employed for cultivating it being left to his discretion, *held* that the tenant was a tenure-holder. (45 Cal. 805). Whether tenants are really raiyats or tenure-holders depends ultimately on questions of fact; one must look to the attendant circumstances to judge of the purpose for which the land was acquired. Where a tenant acquired land and reclaimed it merely in order that it might be cultivated by others who would pay rent to him, whilst he resided and followed his avocations elsewhere and had no intention of cultivating it himself, *held* that it was a tenure, not a raiyati holding. (46 Cal. 90; 23 C. W. N. 649)

Where the origin of the tenancy is not known, how are you to determine whether a tenant is a tenure-holder or a raiyat? K. L. 1925(a).

Where land is let out by written lease, and it clearly indicates the intention of the lessee there is no difficulty in determining the class of the tenancy. But in cases where the terms of the lease creating the tenancy are ambiguous or in cases where there is no written lease, and the intention of the parties cannot be discovered, either because it is an old tenancy or for other reason, the court should look into the subsequent conduct and surrounding circumstances to determine the nature of the tenancy (15 C. W. N. 896 at p. 905). Where the origin of the tenancy is not known or

the terms of the documents are ambiguous, what has to be considered is the attendant circumstances and in such a case the method in which the tenancy has been and is enjoyed can also be considered in order to come to a proper solution of the question relating to the tenure. (A. I. R. 1923 Cal. 340) In cases where the origin of the tenancy is unknown, the mode of user of the land may furnish a valuable clue to determine the original purpose of the tenancy and where the terms of the grant are ambiguous, evidence of conduct subsequent may also be admissible (27 C. L. J. 334) In deciding the question of the character of a tenancy, not only its origin but also the subsequent conduct of the parties should be taken into consideration. Thus, where the original area of the lands taken were considerably more than what could be cultivated by the tenant himself or by members of his family or by hired servants or with the aid of partners and the tenant himself was not a member of the cultivating class and where subsequent settlements were also of large areas and the total area held by the tenant exceeded 1300 Bighas, it was held that these circumstances led to the conclusion that these lands were taken for the purpose of settling tenants on them and that the lease was a tenure. (15 C. W. N. 218) But it is only in cases in which the terms of the documents creating the lease are ambiguous and in cases where there is no written lease and it is not clear what was the original purpose of the tenancy was that the Court should look into the subsequent conduct of the parties and surrounding circumstances to determine the nature of the tenancy. (15 C. W. N. 896 ; 14 C. L. J. 38) Where the terms of a document creating the lease are not ambiguous, the question whether the tenant is a tenure-holder or a raiyat must be determined from the document itself without reference to the subsequent conduct of the parties. (*Ibid.*)

A person takes a lease of 110 bighas of land for the purpose of cultivating it by himself. He however brings it under cultivation by establishing tenants on it. Is he a tenure-holder or a raiyat ?
B.L. 1910 (b)

When the terms of the original grant are ambiguous or do not show the nature of the tenancy created by the lease, how would you determine the status of the tenant i.e. whether he is a tenure-holder or a raiyat ?
B.L. 1914 (b)
P.L. 1908.

The fact that the tenants are *bhadrалоques* does not by itself show that the lands were not acquired for the purpose

of cultivation, as most *Shadralogues* in villages in this country carry on cultivation by servants or labourers. (21 C. W. N. 188) The word "jote" does not necessarily show that it is not a tenure but a holding. (8 C. W. N. 117 ; 21 C. W. N. 68 ; 48 Cal. 460)

Explanation—According to Sub-sec. (2) read with the Explanation, the test is whether the tenant has the right to bring the land under cultivation, though he might use it for the purpose of grazing cattle on it. (*Per Doss J* in 14 C. W. N. 372) In order to bring a lease for the purpose of grazing within the meaning of the Explanation, it is necessary to prove that the grazing was in relation to cultivation which is the primary purpose for which a raiyat acquires the right to hold land. The mere circumstance that a considerable portion of the lands comprised in the tenancy was let out for the purpose of grazing is not conclusive upon the question whether the lessee has or has not acquired the status of a raiyat. (17 C. L. J. 411).

Sub-Sec. (4) :—Sub-sec. (4) provides certain rules for determining whether a tenant is a tenure-holder or a raiyat ; Cl. (6) is important ; it says "the court shall have regard to the purpose for which the right of tenancy was originally acquired." Sub-sec. (5) is equally important ; it provides that where the area held by a tenant exceeds 100 Bighas the tenant shall be presumed to be a tenure-holder until the contrary is proved. In determining the status, therefore, of a tenant, namely whether he is a tenure-holder or a raiyat, two elements have to be borne in mind ; first, the purpose for which the land was acquired and secondly, the extent of the tenure or holding. A close examination of the definition-clauses makes it quite obvious that both these elements are closely inter-related. The law assumes the raiyat to be the actual cultivator of the soil either by his own labour or the labour of members of his family or by hired labourers and it assumes also that ordinarily a larger area than 100 Bighas would

make cultivation by personal agency of the tenant improvable. The presumption provided in Sub-sec. (5) is founded on that hypothesis. (45 Cal. 805 P. C ; 46 Cal. 90 P. C.)

Nature of tenancy, if can be changed.—There is nothing to prevent the landlord and the tenant, notwithstanding the existence of an unambiguous lease, to alter the original nature of a tenancy by agreement, and there may possibly be cases where subsequent conduct may be set up as evidence of such agreement. [But the nature of the tenancy can not be altered to the detriment of the rights of under-tenants. (15 C. W. N. 896 ; 14 C. L. J. 36)] Where, however, no such agreement is set up and it is clearly proved that the land was originally acquired by the tenant for cultivating it by himself or by hired servants or by members of his family, the character of the tenancy is not affected by the mere fact that the land was subsequently let out to tenants. (15 C. W. N. 896 at p. 905, *per* N. Chatterjee J.) The mere fact that a tenant has sublet his lands does not by itself establish conclusively that he is a tenure-holder. The intention of the parties must be looked to (27 C. L. J. 334). Where a tenancy was originally created for cultivating purposes at its inception (the area was more than a hundred bighas), and the land were in the possession of *bhagchasis*, it was held that *bhagchasis* were not necessarily tenants and the tenancy was a *raiya*ti holding and not a tenure. (19 C.W.N. 1917.) A tenancy which was originally created for the purpose of cultivation and not for collection of rent, but was subsequently held partly as *nij-jole* and partly let out to sub-tenants or used for erecting shops on it and taking rent from the shop-keepers—held, that this did not change the original character of the grant (which was *raiya*ti) even in respect of the portion let out (8 C. W. N. 751 ; 11 W. R. 88). If at the inception of a certain tenancy it is not a middle man's interest, subsequent letting out of the lands should not convert the nature of the tenancy. (5 C. L. J. 53 ;

31 C. W. N. 188 ; 43 I. C. 940.) Similarly, where land let for agricultural purposes has, with the consent of the landlord, ceased to be agricultural, and the tenant has built a homestead or used part of it for tanks or gardens the nature of the tenancy is not thereby changed. (10 C. L. R. 25). But see 5. C. L. J. 522 : "Sec. 5 of the Bengal Tenancy Act defines the status of a tenure-holder as also of a raiyat, but neither the definition of a tenure-holder nor that of a raiyat, as has been repeatedly held, is exhaustive, and nothing has been shown to us to lead us to the conclusion that a person who may have originally acquired a large tract of land ostensibly with the object of cultivating it by himself or by his servants or members of his family, may not afterwards convert himself, so far as third parties (under-raiyats) are concerned, into a rent receiver and give those persons, against himself, the right to remain upon the land without being able to be ejected at his instance without prejudice to the rights of his own landlord." (*Per* Ameer Ali J. in 5 C. L. J. 522 at p. 526).

Under-raiyat—It is to be observed that the status of an under-raiyat does not depend on the purpose for which land is held. Every tenant who holds land under a raiyat is an under-raiyat, whether his purpose be to collect rent or to cultivate the land. A tenant who holds land for the purpose of collecting rent from a raiyat is, therefore, an under raiyat and not a tenure-holder, because he does not hold under a proprietor or tenure-holder.

Sub-sec. (5) Presumption :—The presumption, here enacted, is only a rebuttable one. (8. C. L. J. 533). Where the area of the tenancy is less than 100 bighas there is no statutory presumption either way. The presumption is based on the fact that ordinarily a raiyat or cultivator holds no more than a few acres of land. The law assumes that ordinarily a larger area than 100 bighas would make cultivation by the personal agency of the tenant improbable.

The presumption provided in sub sec. (5) of S. 5 is founded on that hypothesis (27 C. L. J. 543 at p. 546.)

[**Problem.**—A has obtained a lease of land for the purpose of establishing tenants on it. B has obtained a lease of land for the purpose of growing crops. B after getting into possession of his land sublet it, to C and C grows crops on it. D occupies a piece of land for the purpose of cultivation and another piece in the same village for the purpose of habitation. Under what different denomination of tenant would A, B, C, come and under what denomination would D come with respect to the land occupied by him for the purpose of habitation? B. L. 1904. A is a tenure-holder, B is a raiyat, C an under-raiyat and D a (*khudkhasi*) raiyat.]

Presumptions under the B. T. Act :—(1) Presumption as to a tenant being a tenure-holder when area of his tenancy exceeds 100 bighas. [S. 5 (5)]. (2) Presumption as to a raiyat holding land continuously for 12 years as raiyat for the purposes of S. 20. [S. 20 (7)] (3) Presumption as to rent which is being paid by an occupancy raiyat, to be fair and equitable. [S. 27] (4) Presumption as to correctness of the price-list published in the *Gazetta* (S. 39) (5) Presumption as to tenure-holder or raiyat holding at a particular rent or rate of rent from time of the Permanent, when it is proved in a suit or proceeding under the Act, that the rent has not been changed during the preceding 20 years of the suit. [S. 50 (2)] (6) Presumption as to the continuity of rent and conditions from the preceding agricultural year [S. 51] (7) Presumption that the area of the tenure or holding was settled after measurement in respect of the estate or permanent tenure at the time of the entry of the area in patta, kabuliyat, counterfoil, rent-receipts and rent-rolls. [S. 52 (9)] (8) Presumption as to the tender of rent, by production of the receipt of postal money-order. [S. 54 (3)] (9) Presumption as to what are improvements [S. 76

What are the presumptions in favour of a tenant under B. T. A. ?
B.L. 1913(b).

- "(2)] (10) Presumption as to notice of surrender being given, when question of indemnity arises. [S. 86 (3)] (11)
 Presumption as to express consent to division when there is entry in the landlord's rent-roll showing the division of tenure or distribution of rents. [S. 38, Proviso (1)] (12)
 Presumption as to correctness of map, record of boundaries and measurement made by landlord [S. 91 (2)] (13)
 Presumption as to final publication of record-of-rights.
 • [S. 103 B (4)] (14) Presumption as to correctness of entries in finally published record-of-rights. [S. 103 B (5)] (15)
 Presumption as to the fairness of rates in the Table of Rates confirmed by the confirming Authority [S. 104 B (6)]
 (16) Presumption as to existing rent being fair and equitable [S. 105 (4)] (17) Presumption as to the lawfulness of any agreement or compromise between the landlord and tenant for the purpose of settling a dispute pending decision before a revenue officer. [S. 109 B] (18) Presumption that a land is not the proprietor's private land when it is not *Khamar, Nij-jole, Sir, Khamat* or *Zerai* land. [S. 120 (2)]
 (19) Presumption that summons has been duly served when it is proved that it was posted under registered cover. [S. 148].

Can an intermediate interest be created between a zemindari and putni tenure? Give reasons.
 B.L. 1924 (a).

Creation of intermediate interest—A Zemindar or a tenure-holder who carves out a tenure is competent to interpose between himself and his tenant an intermediate holder who may realise the rent payable to himself by his original tenant ; but he cannot prejudice the position of the first tenant or take away or destroy the value or effect of the prior interest or limit its extent (34 C. L. J. 79 ; 9 C. W. N. 656. *Contra*. 14 C. W. N. 389.) See also 8 C. W. N. 438. Thus, an intermediate interest may be created between a proprietary right and a mukarari right (1 Pat. 38.) or between a putnidar and a durputnidar. (34 C. L. J. 76). There is nothing in the policy of the law or the custom of the country to prevent the creation of an intermediate tenure

between a putnidar and a durputnidar ; it is immaterial what name is given to it. (*Ibid* ; 7 C. L. J. 23 notes) In 34 C.L.J. 77 it has been *held* that a Zemindar can create a tenure between his Zemindari and the *putni* which had already been created under it, and the intermediate tenure-holder between the Zemindar and the putnidar can recover rent from the putnidar. [If the name of putni be given to the intermediate tenure that does not convert the original putnidar into a durputnidar and as against both the Zemindar and the intermediate tenure-holder, the original putnidar's right remains the same. (9 C. W. N. 656 approved, in 34 C. L. J. 77, 79.)] But in 37 C. L. J. 141 it has been *held* that the idea of a putni being created over another *putni* is absolutely foreign to the scheme of the Putni Regulation. [See also 14 C. W. N. 389.] There can, however, be no objection to the assignment of the right of the Zemindar to receive rent from the putnidar which he is entitled to get under the putni settlement ; for example, he may create an *ijara* or he may execute a mortgage or make over possession to the mortgagee. In such cases, the assignee of the Zemindari interest would be entitled to recover rent from the putnidar by virtue of the assignment, but there is no relationship of landlord and tenant between the assignee and the putnidar. See Author's Bengal Regulation p. 128 (3rd Ed.)

Where there are two raiyati leases of the same land, the subsequent lessee has no right to recover rent from the earlier lessee. (37 C. L. J. 163.)

Putni tenure if governed by B. T. Act.—See Author's Bengal Regulation, pp. 128-29 and 131-133 (3rd Ed.) and S. 195 (c) of this Act.

CHAPTER III—Tenure-holders. (Ss. 6—17).

NOTE.—This chapter deals with the rights and liabilities that attach specially to the highest class of tenants & the rights of a

Compare the rights of a

Permanent
tenure holder
with those of
occupancy
tenant.
U. 1920(a).

tenure-holders. It will be remembered that tenure-holders always include under-tenure holders. The rights and liabilities which attach to the tenure-holders in common with the other classes of tenants are dealt with in Chapter VIII and the subsequent Chapters.

Then can the
rent of a
tenure be
enhanced
and subject to
what limita-
tions? B. L.
107, 1908,
113 (a);
L. 1905,
107, 1911.

A.—Enhancement of Rent

1. Grounds of enhancement of rent of tenures—Where a tenure has been held from the time of the Permanent Settlement, its rent shall not be liable to enhancement except on proof—

(a) that the landlord under whom it is held is entitled to enhance the rent thereof either (i) by local custom or (ii) by the conditions under which the tenure is held; or

Then, how,
and to what
extent, may a
landlord
enhance the
rent of tenure
holders? Is a
notice of en-
hancement
necessary?
L. 1897.

(a) that the tenure-holder, by receiving reductions of his rent, otherwise than on account of a diminution of the area of the tenure, has subjected himself to the payment of the increase demanded, and that the lands are capable of affording it. (S. 6)

Note.—This section specifies the conditions on proof of which tenure held from the time of the Permanent Settlement are liable to enhancement, while Section 7 prescribes rules and limitations regarding the amount of the enhancement which may be imposed on tenure existing from the time of the Permanent Settlement when they are liable to enhancement and also lays down rules for enhancement of rent of tenures subsequently created when they are liable to enhancement. "Tenures may be divided into two classes: Permanent tenures which are heritable and are not held for a limited time. [See S. 3 cl. (9)] and non-permanent tenures, the term of which is limited. Rents of either of these two classes of tenures may be fixed, in which case, it is obvious that there can be no enhancement of rent, but only additional rent may be assessed for additional area [S. 52]. If the rents are not fixed, then in respect of tenures existing from the time of the Permanent Settlement, enhancement

may be made only on proof either of the two conditions mentioned in S. 6, and as regards *both* the classes the limits of enhancement are mentioned in Ss. 7-9." (Mitter & Mukherjee, 56) Under S. 6, cl. (a), in the absence of proof of local custom, the court has to determine *firstly*, whether the tenure has been held from the time of the Permanent Settlement, and *secondly*, what are the conditions under which the tenure is held (38 C. L. J. 121). In the absence of a local custom and unless the tenure was created after the Permanent Settlement, a Zemindar can *not* enhance rent if he can not prove (i) that by the conditions of the tenancy he is entitled to enhance (84 J. C. 86) or (ii) that the tenure-holder by receiving abatement has subjected himself to increase *and* the lands are capable of affording it.

This section does not deal with *all* tenures but only with those that can trace their existence back to the days of the Permanent Settlement. The Act is silent as the grounds on which the rent of tenures not held from the time of the Permanent Settlement can be enhanced. There would seem to be no legal restrictions on the enhancement of the rent of such tenures, except such as are imposed by the terms and conditions of the deeds under which the tenures are held. (13 M. I. A. 248; 44 C. L. J. 385).

This section is founded on Sec. 74, cl. 1 of Reg. VIII of 1793 which ran as follows "No *Zemindar* or other actual proprietor of land shall demand an increase from the *talukdars* dependent on him, although he should himself be subject to the payment of an increase of *jama* to Government except upon proof that he is entitled so to do, either by the special custom of the district, or by the conditions under which the *talukdar* holds his tenure or that the *talukdar* by receiving abatement from his *jama*, has subjected himself to the payment of the increase demanded, and that the lands are capable of affording it."

Tenure-holders' rent may also be increased on the ground of increase of area. *Vide Sec. 52 post.**

The present section should be read with Sec. 50 of this Act which provides as follows :—“(1) Where a tenure-holder...and his predecessors-in-interest have held at a rent or rate of rent which has not been changed from the time of the Permanent Settlement the rent or rate of rent shall not be liable to be increased except on the ground of an alteration in the area of the tenure.....(2) If it is proved in any suit or other proceeding under this Act that...a tenure-holder...and his predecessors in interest have held at a rent or rate of rent which has not been changed during the twenty years immediately before the institution of the suit or proceeding, it shall be presumed, until the contrary is shown, that they have held at that rent or rate of rent from the time of the Permanent Settlement.” The result of Sections 6 and 50 taken together is :—(1) A tenure held from the time of the Permanent Settlement at the same rent is not liable to enhancement of rent. (2) A tenure held from the time of the Permanent Settlement, but not at the same rent, is liable to enhancement but only on the grounds specified in Sec. 6. (3) A tenure not held from the time of the Permanent Settlement (and not held at a fixed rent or rate of rent) is liable to enhancement of rent on any reasonable ground.

Diminution of area.—A reduction of rent granted to a tenure-holder on account of diluvion or for land taken under

* But it is to be noted that increase of rent for increased area is not strictly speaking an “enhancement” of rent. “If the quantity of land held by a rayat is found upon measurement to be greater than the quantity for which he has been paying rent, and if he is compelled to pay rent for the excess, the whole rent payable by him is increased but the rate of rent payable is not increased and the term “enhancement” might well be confined to the latter increase” (*Rent Commission*). A decree for enhancement of rent can never have retrospective operation and back-rent cannot be claimed at enhanced rate in the suit in which enhancement is claimed, but a landlord is entitled to claim back-rent for additional area. (*M. C. L. J.*, 315).

the provisions of any enactment (e. g. Land Acquisition Act.) for the time being in force, for the acquisition of land for public purposes or companies, shall not be deemed a *reduction* within the meaning of this section.

"Except on proof etc."—The *onus* of proof, that the tenure has been held from the time of the Permanent Settlement, lies on the tenure-holder and when he has succeeded to prove that much, the *onus* shifts to the landlord to prove that the rent is liable to enhancement under any of the grounds mentioned in this section. (13 M. I. A. 248 : 10 M. I. A. 183 ; 3 C. W. N. 341.) But in the case of a dependent taluk which became so by the resumption of an invalid *lakhiraj*, the *onus* is on the landlord to show that the tenure has not been held from the time of the Permanent Settlement, but was created afterwards. (10 Cal. 920)*

2. Limits of enhancement of rent of tenures.—(1) When the rent of a tenure-holder is liable to enhancement, it may, *subject to any contract between the parties*, be enhanced up to the limit of the customary rate payable by persons holding similar tenures in the vicinity

(2) Where no such customary rate exists, it may, subject as aforesaid (*i. e.* subject to any contract between the parties) be enhanced up to such limit as the Court thinks fair and equitable.

(3) In determining what is fair and equitable rent, the Court shall leave to the tenure-holder as profit not

* The reason of this difference of *onus* is thus explained : There is a presumption that the Zemindar is entitled to enhance the rent of all lands situated within the Zemindari. The effect of this presumption is to cast upon the defendant the burden of showing that the land held by him is an exception to that general rule. But before this presumption can apply, it must be shown that the lands, to which it is sought to apply were included in the Zemindari at the time of the Permanent Settlement. At that time, *lakhiraj* grants, antecedent to 1790, were not included within the Zemindari though some grants after 1790, were included. Whether the resumed *lakhiraj* belongs to the former class or to the latter is a matter of evidence. And, till the plaintiff proves that it belongs to the latter class, the presumption does not arise, nor is the *onus* thrown on the defendant.

- less than 10 per cent of the balance which remains after deducting the expenses of collection from the gross rents payable to him and shall have regard to—

(a) the circumstances under which the tenure was created, for instance, whether the land comprised in the tenure, or a great portion of it, was first brought under cultivation by the agency or at the expense of the tenure-holder or his predecessors-in-interest, whether any fine or premium was paid on the creation of the tenure and whether the tenure was originally created at a specially low rent for the purpose of reclamation ; and

(b) the improvements, if any, made by the tenure-holder or his predecessors-in-interest.

(4) If the tenure-holder himself occupies any portion of the land included in the area of his tenure, or has made a grant of any portion of the land either rent free or at a beneficial rent, a fair and equitable rent shall be calculated for that portion and included in the gross rents aforesaid. (S. 7).

Note.—This section prescribes the rules regarding the amount up to which the rent of a tenure (whether existing at the time of the Permanent Settlement or created after it) which is liable to enhancement may be enhanced. Every tenure, whether permanent or otherwise, is ordinarily subject to the incident of enhanceability of rent. The mere fact of payment of rent at a uniform rate for any number of years, apart from the presumption under S. 50, does not raise any presumption of fixity of rent (65 I. C. 527). Similarly, mere forbearance on the part of the landlord does not justify the inference that the tenure is not enhanceable. (38 C. L. J. 372). Unless the landlord is precluded by the terms of the contract and the lands cannot be brought within the exceptions under Reg. VIII of 1793, he is entitled to sue for enhancement. The mere fact that a tenure is hereditary does not show that it is not enhanceable. (24 C. W. N. 874). See pp. 19-20 *ante*. Fixity of rent may be (i) provided for

by contract, (ii) inferred from surrounding circumstances and facts and conduct of parties, or (iii) may be presumed under the law. (Mitter & Mukherjee, 62).

Onus of proof—In a suit for enhancement of rent of a tenure under the present section it is for the plaintiff to prove that the existing rate is below the customary rate payable by persons holding similar tenures in the vicinity or that it is not fair and equitable before the *onus* can be shifted to the defendant to prove that the existing rent is fair and equitable. (26 Cal. P. C. 832)

Notice if necessary—The section does not require the service of a notice of enhancement as the former law did.

"Subject to any contract, etc."—*That is to say*, if there be a contract, the rent shall be enhanced according to that ; otherwise up to the customary rate for similar tenures in the vicinity. Where the terms of the lease are ambiguous the rights of the parties may be regulated by subsequent conduct.

"Customary rate."—This term now replaces the old familiar term "parganah rate." Customary rate is to be distinguished from the rate obtainable by open commercial competition.

"May be enhanced etc."—It leaves to the discretion of the Court to grant an enhancement or not ; but such discretion is not absolutely unfettered.

"Similar tenures."—Both these words are important. The second word shews that the same class of tenants must be taken for comparison ; the rent of a tenure-holder cannot be enhanced to the limit of the rent of the *raiyat*. The word "similar" further shews that tenures of the same grade should be taken for comparison ; the rent of a *putni* tenure cannot be enhanced to the limit of the rent of a *dur-putni* or a *se-putni* tenure.

a. **Sub-sec. (2)**—For an enhancement of rent under S. 7 (2) it is necessary to show *firstly* that the rent is liable to enhancement and *secondly* that there is no customary rate payable by persons holding similar tenures in the vicinity. It is only when these have been made out that the rent can be enhanced up to such limit as the court may think fair and equitable. (36 C. L. J. 96 ; 40 C. L. J. 585). Before a court can take action under S. 7 (2), it must be definitely proved that no customary rate exists. The mere fact that the landlord fails to prove the customary rate, does not entitle him to ask the court to determine a fair and equitable rent. (88 L. C. 512 ; 89 I. C. 190).

Joint landlords—This section is subject to the provisions of S. 188 of this Act. Prior to the amendment of S. 188 by Act IV of 1928 a co-sharer landlord could not maintain a suit for enhancement under the present section even making the other co-sharers parties defendants in the suit. (38 Cal. 270 P. C.) But since the amendment of the section (S. 188) by Act IV of 1928 a cosharer landlord may bring a suit for enhancement of the rent of a tenure under the present section if all the other cosharer landlords are made parties defendants. See notes heading "Cosharer landlord" at p. 15 *ante*.

"Fair and equitable."—No presumption arises in the case of the tenure holders as in that of the occupancy-raiyats (S. 27 *infra*) that the existing rent is fair and equitable. In determining what is fair and equitable rent, the Court shall be guided by the rules laid down in sub-secs. (3) and (2).

Gross rents.—mean the whole rent paid to him and includes all returns that the the tenure-holder receives in money, things or service for all kinds of land, agricultural, or otherwise, and for woods or water thereupon. *For instance* ; A landlord sues to enhance the rent of a tenure-holder, B. The tenure contains 500 bighas of agricultural land let to several raiyats, a fishery let to C, a

forest to D, and 20 bighas of land to E, for building a factory. The return made by C, D and E are not within the definition of rent in section 3, clause 5, but they should be included in "gross rent" mentioned in this sub-section.

"Beneficial rent"—means rent that is less than full rent.

3. Power to order gradual progressive enhancement.—If it thinks that an immediate increase of rent would produce hardship, the Court may direct that the enhancement shall take effect gradually at such times and by such instalments extending over a period not exceeding ten years as the Court may fix in this behalf. (S. 8).

Note :—The object of this section is to allow the tenure-holder in case of any large enhancement to adapt himself gradually to the alteration of his circumstances and to avoid immediate ruin. Compare Sec. 36 where a similar provision has been made with regard to the enhancement of the occupancy raiyats' rent.

This section has been amended by Act IV of 1921 with the object of giving greater powers of discretion to the Court as regard progressive enhancements, by making the total enhancement distributable over *ten* instead of *five* years and in any way the court considers fair.

4. Rent once enhanced may not be enhanced for 15 years by a Court.—When the rent of a tenure-holder has been enhanced by the Court or contract, it shall not be again enhanced *by the Court* during fifteen years next following the date on which it has been so enhanced and for the purposes of this section if an order for gradual enhancement of such rent has been made by a Court in accordance with the provisions of S. 8 the full rent fixed by such order shall be deemed to have come into effect from the date of such order (S. 9).

Note.—The words "and for the purposes...such order" have been added by Act IV of 1928 in order to make it

Distinction
between S. 9
and Ss. 29 (c)
& 37 (1).

“clear as to how the section is to be applied when there have been gradual enhancements under S. 8. Compare Secs. 20 (c) and 37 (1) relating to enhancement of the occupancy raiyats' rent. Unlike the provisions regarding the occupancy-raiyats, this section does not bar a subsequent suit for enhancement within 15 years *if the prior suit was dismissed on merits*; nor does it bar *enhancement by contract* within the protected period. Sec. 9 protects tenure-holders' rents from being enhanced *by the Court* within 15 years next following the date on which it has been enhanced *by the Court* or *by a contract*. It does not prevent a tenure-holder from contracting to pay an enhanced rent within 15 years from a previous enhancement but *the Court* cannot decree an enhancement within 15 years of a prior enhancement. Sec. 29 (c) protects occupancy raiyats' rent from being enhanced *by contract* within 15 years from the date on which it has been enhanced *by contract* and S. 37 (1) provides that a suit for the enhancement of rent of an occupancy holding is not entertainable if within 15 years next following its institution the rent of the holding has been enhanced *by a contract* or if a decree has been passed by the Court *enhancing the rent* or dismissing the suit on the merits. S. 9, unlike S. 37, is silent as to the period within which a suit for enhancement cannot be brought; S. 37, which applies to the enhancement of rent of an occupancy raiyat, provides that a second suit for enhancement cannot be brought within 15 years, but S. 9 only says that the Court will not pass a decree within 15 years, but is silent as to whether a suit instituted within 15 years is maintainable. It seems, therefore, that a suit may be brought within the time and if 15 years expire during the pendency of the suit, a decree may then be passed. (Sen).

B.—Other incidents of tenures.

1. **Ejection of permanent tenure-holders.**—
A holder of a permanent tenure shall not be ejected by

his landlord except on the ground that he has broken a condition on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected : *Provided* that where the contract is made *after* the commencement of this Act, the condition is consistent with the provisions of this Act. (S. 10).

Note.—The only ground on which the holder of a permanent tenure may be evicted is that he has broken a condition in the contract between him and his landlord, under the terms of which he is liable to be ejected on its breach, provided that the condition, if embodied in a contract made after the commencement of this Act, is consistent with its provisions. This section should be read with Secs. 65, 89, 155 and 178 (1) (c). Sec. 65 enacts that a permanent tenureholder shall not be ejected for arrears of rent but his tenure shall be liable to be sold in execution of a decree for the rents thereof and the rent shall be a first charge thereon. [A stipulation in a *putni* lease that by reason of non-payment of rent by the *putnidar* he would forfeit his tenancy is not, therefore, valid (2 C. W. N. 45; 4 C. L. J. 521)]. Sec. 89 enacts that a tenant shall not be ejected from his tenure or holding except in execution of a decree. Sec. 155 enacts that (1) a suit for the ejectment* of a tenant on the ground (i) that he has used the land in a manner which renders it unfit for the purpose of the tenancy or (ii) that he has broken a condition on breach of which he is, under the terms of a contract between him and the landlord, liable to ejectment, shall not be entertained unless (a) the landlord has served a notice on the tenant in the prescribed manner specifying the particular misuse or breach of condition and requiring the tenant to remedy the same where it is capable of remedy and to pay reasonable compensation for the misuse or breach; and (b) the tenant has failed within a reasonable time to comply with the requisition. (2) A decree in such a suit shall (a) declare what compensation is payable to the landlord for the misuse or breach; (b) declare

What are the incidents as regards ejectment, enhancement of rent, transfer and succession of tenure existing at the time of the Permanent Settlement, those held since, and of temporary tenures? B. L. '15 (a)

whether the misuse or breach is capable of remedy or not ; and (c) fix a time (which may be extended) for paying the compensation and remedying the misuse or breach, if capable of remedy. (3) A decree for ejectment shall not be executed, if the tenant pays the compensation and remedies the misuse or breach, if capable of remedy, within such time. Sec. 178, Sub-sec. 1, cl. (c) enacts that no contract made with the landlord either before or after the passing of this Act, shall entitle a landlord to eject his tenant otherwise than in accordance with the provisions of this Act. *The result of these sections read together is as follows :—*(1) A permanent tenure-holder shall not be ejected except by suit notwithstanding anything in a contract made with his landlord, either before or after the passing of this Act, to the contrary. (2) A suit for ejectment shall not lie if notice under Sec. 155 has not been served on him, and a reasonable time has not expired after notice and shall not lie except on the ground that the tenure-holder has violated a condition carrying forfeiture. (3) He shall not be ejected for arrears of rent as such. But if arrears of rent be a condition of forfeiture, in a contract made *before* the commencement of this Act, he may be ejected *after* his double failure, once after notice and next after decree to pay compensation. A condition of forfeiture for arrears of rent is void, if made *after* the commencement of this Act. (4) He may be ejected for breach of any condition carrying forfeiture as penalty (other than that of forfeiture for arrears of rent, after such double failure to pay compensation and remedy the breach where remediable), but such condition must be consistent with the provisions of this Act if the contract is made *after* the passing of this Act.* (5) He shall be ejected for breach of a condition carrying forfeiture as penalty and consistent with the provisions of this Act, if the contract is made after

* Besides that relating to arrears of rent, the following conditions, among others, are inconsistent with the provisions of this Act : *viz.*, that the tenure-holder shall be ejected (a) if he transfers or bequeaths his tenure

the commencement of this Act, when the breach is irremediable. (Ray).

Proviso.—The Proviso says that if the contract was made *after the* commencement of this Act, the condition in it, the breaking of which would render the tenure-holder liable to be ejected must not be inconsistent with the provisions of this Act. Thus a condition in a contract made after 1885 declaring a tenure-holder liable to ejectment for non-payment of rent, is not enforceable as it is inconsistent with the provisions of Sec. 65. But such a condition would be enforceable if the contract had been made *before* passing of the Bengal Tenancy Act. [Cf. Secs. 18 (b) and 25 (b) *infra*].

Non-permanent tenure holder.—It is to be observed that neither this Section nor Sec. 65 applies to a non-permanent tenure, though Secs. 89, 155 and 178, Sub-Sec. (1) cl. (c) do so apply. A temporary tenure-holder, therefore, shall not be ejected except by suit. But he may be ejected for arrears of rent or for breach of *any* condition of his lease which carries forfeiture as penalty. Ejectment, however, for breach of condition may be obtained only after the formalities of Sec. 155 have been gone through.

Limitation—The period of limitation, for ejecting any tenure-holder (or raiyat) on account of any breach of a condition in respect of which there is a contract expressly providing that ejectment shall be the penalty of such breach is one year from the date of the breach. (Sch. III. Part I, Art. 1)

Denial of landlord's title, if a ground of ejectment.—Under the Bengal Tenancy Act, no tenant can be ejected except in execution of a decree and upon the

Is a denial of landlord's title a ground for ejecting a

(Sec. 11); or (b) if he claims decrease of area (Sec. 52); or (c) if he does not pay interest on arrears of rent at more than $12\frac{1}{2}$ per cent. (Sec. 67); or (d) if he does not pay abwabs (Sec. 74); or (e) if he grants a permanent *mohattari* lease. (Sec. 179).

tenant under the B. T. Act? In a suit for rent the tenant denies the landlord's title and the suit is dismissed. The landlord subsequently brings a suit for ejectment and in that suit the tenant leads tenancy. Is the landlord entitled to succeed? (C. L. 1919(a), 920 (1)).

grounds provided for in the Act. (S. 89) The Sections providing the grounds upon which a landlord may eject a tenant are Ss. 10, 18, 25, 44, 48 and 66. Denial of landlord's title is no ground of ejectment under any one of the provisions of the aforesaid sections. All these sections provide that a tenant cannot be ejected except upon the ground mentioned therein. So a tenant denying his landlord's title is not liable to ejectment *under the Bengal Tenancy Act*. (17 Cal. 196; 5 C. W. N. 163; 20 Cal. 101) But a denial of the landlord's title *before* the B. T. Act was passed operated as a forfeiture of the tenant's right. (4 C. W. N. 42; 5 C. W. N. 263). The rule that a denial of the relationship of landlord and tenant does not entail a forfeiture does not apply where the denial is given effect to by a decree of court and the tenant is estopped as a matter of record to set up a tenancy in the ejectment suit (2 C. W. N. 755; 3 C. L. J. 201.) Where a tenant denies the title of his landlord in a suit for rent and the rent-suit being dismissed, the landlord brings a suit for khas-possession, the landlord is entitled to succeed in as much as the question as to the relationship of landlord and tenant is barred by the rule of *res judicata* and the defendant could not assert his title as tenant in such suit. (15 C. W. N. 335.) Where a suit for rent was dismissed on the denial by the tenant of the landlord's title and on appeal by the landlord, the suit was withdrawn by him with liberty to bring a fresh suit, *held*, in a subsequent suit by the landlord for *khas* possession that the only decree that could be relied on was a decree which ceased to exist owing to the withdrawal of the suit by the landlord and so the denial of the relationship of landlord and tenant by the tenant did not work any forfeiture as it was not given effect to by a decree of the court. (16 C. W. N. 730.) A mere renunciation of a tenancy or a mere disclaimer of liability to payment without denial of the landlord's title cannot operate a forfeiture (19 C. L. J. 77) Similarly, where a tenant does not deny the whole

title of his landlord but sets up the right of a third party, as a co-sharer, there can be no forfeiture. (26 I. C. 919)

[**Problem** :—A, tenant occupying land under B for the purpose of carrying on trade in food grain, grown in the village in which the land is situated, disclaims the title of B, to the land, and sets up that of another person. B thereupon sues to eject A on the ground that A has forfeited his tenancy by disclaiming B's title. Is A liable to be ejected or not, upon that ground? **B. L. (1900.)** Ans. In this case the lease being not for agricultural purposes is governed, by the Transfer of Property Act and not by B. T. Act. According to sec. 111, cl. (g) (2) of the T. P. Act, the denial of the landlord's title occasions a forfeiture, and A is liable to be ejected.]

2. Transfer and bequest of permanent tenure—Every permanent tenure shall, subject to the provisions of this Act, be capable of being transferred and bequeathed in the same manner and to the same extent as any other immoveable property. (S 11)

"Subject to the provisions of the Act"—*Vide* Sec. 12-17, 88, 181 and 183. The right to transfer or bequeath a permanent tenure is limited by the provisions of these Sections.

"**Transferred and bequeathed**"—*Vide* the definition of "Permanent tenure" at p. 19 *ante*. Heritability is an essence of such a tenure and this section gives the tenure-holder the right to bequeath it by a will and to transfer it *inter vivos*. A permanent tenure is, therefore, (1) *heritable* by definition, (2) *transferable* unless there be a custom to the contrary and (3) *capable of being bequeathed*. (Sec. 11). It can also be *sub-let*. (Sec. 179.)

Condition restraining alienation—Permanent tenures are, under this section, clearly transferable. A condition in a lease of a permanent tenure for forfeiture or re-entry in case of an assignment in violation of its terms would not, however, be invalid provided the condition is

for the benefit of the lessor or those claiming under him. The provisions of Sec. 10 of the Transfer of Property Act saving conditions restraining alienations in leases where the condition is *for the benefit of the lessor* is not inconsistent with the provisions of this section, and the two provisions are capable of standing together (12 C. L. J. 126 at page 129). Where a landlord grants a permanent and heritable tenure in land, and the lease contains a stipulation restraining the lessee from alienation, such a stipulation is not void (26 Mad. 157; 36 Cal. 745. *Contra* : 17 Cal. 826); but the landlord cannot eject the tenant on breach of this stipulation in the absence of an express condition providing that on breach of the stipulation against alienation the landlord may re-enter or the lease shall become void. (17 Cal. 826; 36 Cal. 745 13 C. W. N. ccxii). In the absence of some such express condition there can be no forfeiture of the lease (*Ibid*) and the lessor's remedy is way of damages or injunction. (36 Cal. 745, 748; 26 Mad. 157) Even where there is a clause for re-entry that should not be enforced unless the defendant fails to pay to the plaintiff in each case such compensation for the breach of the covenant as the Court may consider reasonable [See 12 C. L. J. 126, 29 C. L. J. 40 and S. 155 B. T. Act. But see 21 C. W. N. 117 where it has been held that in cases in which a covenant against alienation is coupled with a proviso for re-entry the landlord is not limited to the reliefs by injunction or damages. There is a "fundamental distinction between two classes of cases which has been recognised in a long line of decisions..... namely, cases where there is a covenant in the lease against alienation, but no right of re-entry is reserved in the landlord, and cases where there is a covenant in the lease against alienation coupled with a clause for re-entry. In the first class of cases, the lease is not forfeited by breach of covenant.....and the remedy of the landlord is either by way of injunction against an apprehended breach.....or by recovery of damages for a breach already committed.....In

the second class of cases, when the lease reserves "a right" of re-entry, the landlord is not limited to the reliefs by injunction or damages, but may at his choice treat the lease as forfeited and exercise his right of re-entry." (*Per* Mookherjee, J. in 21 C. W. N., 117 at pp. 122-123.) But a provision restraining alienation would not have the effect of invalidating a sale in execution; for, it is clear, that a general restriction on assignment does not apply to an assignment *by operation of law* taking effect *in invitum*, as a sale under an execution (20 Cal. 273; 23 Cal. L. J. 428; 16 C. W. N. 173; 17 Cal. 926; 10 Bom. 342). A covenant for forfeiture for voluntary alienation does not include by implication a covenant for forfeiture for involuntary alienation. (21 C. W. N. 117 at p. 122 *per* Mookherjee, J.) A covenant for re-entry by the landlord upon an involuntary sale is, however, valid in India as in England (*Ibid*) Where the execution-sale is directly due to voluntary acts of the lessees *vis.* the execution of a mortgage and omission to pay the mortgage-debt, the assignment cannot be said to be *ad invitum*. (*Per* Sanderson, J. in 21 C. W. N. 117 at p. 121)

Non-permanent tenures—The section does not apply to non-permanent tenures. Such tenures are heritable for the unexpired period of the lease. (19 C. L. J. 448; 3 M. I. A. 261)

3 Voluntary transfer of permanent tenure—

(1) A transfer of a permanent tenure by sale, gift or mortgage (otherwise than a transfer by a sale in execution of a decree or by summary sale under any law relating to *putni* or other tenures) can be made only by a registered instrument:

"Only by a registered instrument."—The provisions of Sec. 59 of the Transfer of Property Act must be held subject to this section and therefore a mortgage of a permanent tenure (whether the amount secured be greater or less than Rs. 100) can be effected by a registered instrument. (2 C. W. N. 499.) It seems that the provisions of Sec. 53

of the Transfer of Property Act and sec. 17 of the Indian Registration Act are also subject to this section (*Sen's B. T. Act.*)

Transfer when complete—The transfer of a permanent tenure is complete as soon as the deed of transfer is registered under the provisions of this section and the transferor is no longer liable for any rent accruing after his transfer is duly registered, although the landlord may not have received notice of the transfer. (16 Cal. 642 ; 19 Cal. 17 ; 19 C. W. N. 112 ; 39 C. L. J. 26 ; 50 Cal. 680). But where the parties have contracted that no transfer shall be valid unless the transferee shall furnish security to the satisfaction of the landlord, and if a transfer has been made, but no security, as stipulated for, has been furnished, then the landlord will not be bound to recognize the transferee and the transferor is still liable for the rent. (19 Cal. 774). And where a transfer is only colourable and *benami*, such a transfer cannot discharge a transferor from liability to pay rent, even if the tenure was transferable and the transfer was made by a registered instrument. (33 Cal. 580.)

Putni tenures.—Nothing in this Act shall affect any enactment relating to *putni* tenures, in so far as it relates to those tenures [Sec. 195, cl. (e).] The Putni Regulation (VIII of 1819) provides rules relating to transfer of Putni tenures ; Secs. 12 and 13 of the present Act have no application to such tenures. A Zemindar or other superior holder of a putni taluk is therefore entitled to refuse to recognise the transfer of a putni taluk until the rules laid down in Ss. 5 and 6 of Reg. VIII of 1819 have been complied with. (17 Cal. 162 ; 20 Cal. 247) But Secs. 15 and 16 which relate to the rules of succession apply to *putni* tenures as there are no rules of succession in Reg. VIII of 1819. The Bengal Tenancy Act, however, applies to the transfer of *dur-putni* tenures as the provisions of Sec. 195, cl. (e) apply only to enactments relating to *putni* properly and strictly so called

and must be treated as excluding those which relate to tenures, which though resembling *putni* (e. g. *dur-putni*) are not strictly *putni*, not possessing all the qualities of them. (18 Cal. 360 ; 42 C. L. J. 490)

Non-permanent tenures—This section does not say anything about non-permanent tenures. So it seems that such tenures are not transferable. (7 C. L. J. 553) *Contra* : 19 C. L. J. 448 and 44 C. L. J. 434. In the latter case, it has been held that in view of S. 6 of the T. P. Act, and in the absence of any provision in the B. T. Act or any other Act prohibiting the transfer of a non-permanent tenure, such a tenure (if created after the passing of the T. P. Act) is transferable.

(2) A registering officer shall not register any instrument purporting or operating to transfer by sale, gift or usufructuary mortgage a permanent tenure in favour of any person other than the sole landlord of such tenure unless there is paid to him in addition to the usual registration fee the "process fee" of the prescribed amount and the "landlord's fee" of the following amount, namely :—

(a) when rent is payable in respect of the tenure—a fee of 2 *per centum* on the annual rent of the tenure provided that no such fee shall be less than Re. 1 or more than Rs. 100 ; and (b) when rent is not payable in respect of the tenure—a fee of Rs. 2, together with the prescribed cost of transmission of the landlord's fee to the landlord.

(3) When the registration of any such instrument is complete, the registering officer shall send to the Collector the landlord's fee, the cost necessary for the transmission of the same, and a notice of the transfer and registration in the prescribed form and the Collector shall cause the fee to be transmitted to, and the notice be served on, the landlord named in the notice, or his common agent, if any, in the prescribed manner.

(4) The landlord's fee or the prescribed cost of transmission payable under this section and under Ss.

- 13 and 15 shall be paid to the registering officer or the Court or the Collector, as the case may be, in the prescribed manner. (S 12 .

Note.—The object of the above provisions is to keep the landlords of permanent tenures apprised of transfers and to secure to them the fees to which they are entitled upon such transfers.

4. Transfer of permanent tenure by sale in execution of decree other than rent-decree.—

(a) When a permanent tenure is sold in execution of a decree other than a decree for arrears of rent due in respect thereof, or when a mortgage of a permanent tenure other than an usufructuary mortgage thereof, is foreclosed, the Court shall, before confirming the sale (under Order XXI R. 92 of the Civil Procedure Code, 1908) or making a decree or order absolute for the foreclosure, require the purchaser or the mortgagee to pay into Court the landlord's fee required by S. 12, together with the prescribed cost of transmission thereof to the landlord, and such further fee for service of notice of the sale or final foreclosure on the landlord as may be prescribed.

(b) When the sale has been confirmed or the decree or order absolute for the foreclosure has been made, the Court shall send to the Collector the landlord's fee, the prescribed cost of transmission of the same and a notice of the sale or final foreclosure in the prescribed form and the Collector shall cause the fee to be transmitted to, and the notice to be served on, the landlord named in the notice, or on his common agent, if any, in the prescribed manner (S. 13).

Effect of non-payment of landlord's fee.—Act I (B. C.) of 1903 provides that no transfer made under Sec. 12, 13, 17 or 18 of B. T. Act, of a permanent tenure, of a holding at a rent or rate of rent fixed in perpetuity or of a share in such tenure or holding shall be deemed to be invalid merely on the ground that the landlord's fee prescribed by Ss. 12 and 13 has not been paid (S. 1). In any case where

the prescribed fee has been left unpaid, the landlord, may, within 2 years of the commencement of this Act or of the date of registration of the document or the date of confirmation of the sale by the Civil Court or of the date upon which the decree or order absolute for the foreclosure of a mortgage is made by the Civil Court, apply to the Collector for realisation of such fee from the auction-purchaser or from the person who has obtained an order absolute for foreclosure of mortgage in the Civil Court, and on such application being presented, the Collector shall realise such fee if still unpaid, together with costs of realisation, from such person as if it were an arrear of revenue (S. 2)

5. Succession to permanent tenure.—When a succession to a permanent tenure takes place, the person succeeding shall give notice of the succession to the Collector in the prescribed form and shall pay to the Collector the prescribed fee for the service of the notice on the landlord and the landlord's fee required by Sec. 12 together with the prescribed cost of transmission thereof to the landlord, and the Collector shall cause the landlord's fee to be transmitted to, and the notice to be served on, the landlord named in the notice, or his common agent, if any, in the prescribed manner. Provided that where, at the instance of the person succeeding, mutation is made in the rent-roll of the landlord within 6 months of the succession, the person succeeding shall not be required to give notice under this section (S. 15).

Note.—A suit for rent is maintainable against some of the heirs or successors in interest of a deceased tenant without bringing all the heirs or successors in interest on the record; but the decree in such a suit will not have the effect of a decree for rent under Chapter XIV of the B. T. Act. (53 Cal. 197 F. B.) Failure on the part of the heirs of a tenant to comply with the requirements of S. 15 does not necessarily entitle the landlord to treat one of the several heirs of the original tenure-holder as representative of the tenancy and a decree obtained by him against the tenant

recognised by him cannot be executed against the entire tenancy unless it is established that the person recognised has been held out by those who were not parties to the suit to represent them in their transactions with the landlord. (26 C. W. N. 138 ; 103 I. C. 707) The only penalty for omission to notify succession to a permanent tenure to the landlord is as provided for in the next section, that is, the person succeeding to the tenure shall not be entitled to recover by suit or other proceeding any rent payable to him by the subordinate tenants. But it does not affect his interest in any other way. (97 I. C. 489). Thus, where no notice was given under S. 15 by the heirs of a permanent tenure-holder, it was held that a decree for arrear of rent against one of the heirs would not bind the other heirs, and their interest would not be affected by the sale of the tenure (26 C. W. N. 138 ; 32 C. L. J. 77.). In order to bind all the tenants, it is to be established that all the tenants have held one of them as their representative in their transactions with the landlord. (26 C. W. N. 138 ; *contra* : 69 I. C. 565).

This section applies to putni tenures (17 Cal 162 ; 19 Cal. 504 ; 37 C. L. J. 222) See p. 58 *ante*. When a *shebani* succeeds another to a permanent tenure created in the name and for the benefit of an idol, the provisions of S. 15 must be complied with. (10 C. W. N. 41)

The Proviso has been recently added by Act IV of 1926 with a view to allow the person succeeding to settle with the landlord direct instead of through Collector.

6. Bar to recovery of rent pending notice of succession—A person becoming entitled to a permanent tenure by succession shall not be entitled to recover by suit, or other proceeding any rent payable to him as the holder of the tenure, until the duties imposed upon him by S. 15 have been performed. (S. 16).

• **Note.**—This Section is analogous to S. 78 of the Land Registration Act, which provides that “no person shall be

bound to pay rent to any person claiming such rent as proprietor or manager of an estate or revenue-free property in respect of which he is required by this Act to cause his name to be registered, or as mortgagee unless the name of such claimant shall have been registered under this Act." It has, however, been held that the provisions of the above section do not apply to the case of a person who is seeking to recover rent as the representative of a deceased proprietor whose name was registered, the rent falling due during the life-time of that proprietor. Thus, where an arrear of rent fell due during the life-time of a registered proprietor, a suit for the recovery of the said arrear of rent by his son B is maintainable, although B's name is not registered, on the principle that B is suing here not as a proprietor but as a legal representative of the late registered proprietor (3 C. W. N. 294, 494). The same principle applies where a registered proprietor dies after bringing the suit and his legal representative gets himself substituted (27 Cal. 178). This section is a penal section and must be strictly construed. It does not apply in the case of a transferee from an heir of a permanent tenure-holder when the transferee brings a rent suit for the period which became due to the transferor. (27 Cal. 535 ; 34 C. L. J. 119 ; 24 I. C. 866 ; 27 C. L. J. 434 dissented from).

"To recover etc."—Sec. 16 does not preclude a party from instituting a suit for rent, notwithstanding that the Collector has not received the notice and the fees referred to therein, but it is a bar to the plaintiff's obtaining a decree before the notice and the fees are received by the Collector, (24 Cal. 241 ; 23 Cal. 87). An objection taken under Sec. 15 not being seriously pressed, the suit was decreed and when the defendant appealed, the plaintiff was allowed pending the appeal to comply with the provisions of Sec. 15. (2 Pat. L. J. 701).

Effect of violation of Sec. 15.

Sec. 16 bars recovery of rent but not institution of suit.

• **Putni tenures.**—Sec. 15 and 16 apply to **Putni** tenures.

“ notwithstanding the provisions of Sec. 195, Cl. (e). Secs. 15 and 16 do not affect the provisions of Reg. VIII of 1819 and they are, therefore, applicable to a *putni* tenure. The object to Sec. 195 (e) is that nothing in the Bengal Tenancy Act shall interfere with the *putni* law in so far as it relates to *putni* tenures, but that in other respects the Bengal Tenancy Act shall be held to apply as supplementing the *putni* law (19 Cal. 504).

Retrospective effect—Secs. 15 and 16 do not have retrospective effect and do not apply in a case in which the succession opened out before the Bengal Tenancy Act came into force. (22 Cal. 337).

No succession certificate required.—Arrear of rent due to the estate of a deceased person can be realized without the production of a certificate under the Succession Certificate Act (VII of 1880) since the “debt” in S. 4 of the said Act includes any debt except rent, revenue or profits payable in respect of land used for agricultural purposes (3 C. W. N. 223).

Suit by landlords of whom some are registered.—Sec. 16 of the B. T. Act is not intended to defeat in its entirety a suit brought by one of several landlords who is not in default, merely by reason of the failure of his co-sharers to comply with the requirements of Sec. 15. Where a co-sharer of the plaintiff landlord not having complied with the requirements of S. 15 B. T. Act, the Plaintiff brought a suit against the tenants for the entire rent making the defaulting co-sharer proforma defendant, held that the Plaintiff was entitled to get a decree in respect of the *entire* rent payable jointly to himself and his co-sharer but a decree should be made in favour of the Plaintiff in respect of the share of rent payable to himself and if his co-sharer does not comply with the requirements of S. 15 before the decree is made, the claim in respect of the share of rent payable to the co-sharer should be dismissed. (14, C. W. N. 788). A co-sharer

landlord can in the presence of other co-sharers who have not complied with the provisions of S. 15 sue for his share of rent and recover it *although there had been no separate collections before.* (40 C. L. J. 504). In 25 Cal. 787 it has been held that if some of several joint landlords get their names registered under the Land Registration Act in respect of fractional shares all the landlords may jointly sue for the entire rent but will get a decree only for a share of the rent proportionate to the share in respect of which their names are registered.

Tenancies created after succession opens out—

If any new tenancies are created by the tenure-holder after the succession opens out, it seems that this section should be no bar to a suit for rent of such tenancies, in as much as there tenancies were no part of the tenure when succession opened out. (Sen).

6A. Interpretation.—In sections 13, 15 and 16 the words 'person succeeding' 'transferee' 'purchaser,' 'mortgagee' and 'person becoming entitled to a permanent tenure by succession' include the successors in interest of such persons, but do not include the landlord where he is the sole landlord. (S. 16-A).

Note—The new Sec. 16A makes it clear that the transferee of a permanent tenure includes his successors in interest.

7. Transfer of and succession to, share in permanent tenure—Subject to the provisions of S. 88, Ss. 12 to 16A shall apply to the transfer of, or succession to, a share in a permanent tenure (S. 17.)

Note—Where a share of a permanent tenure is sold the landlord is bound to recognise the transferee as one of the joint tenants, and unless there has been a division of the tenure under S. 88, all the joint tenants including the transferee are jointly and severally liable to pay the rent. Sec. 88 provides that a division of a tenure or holding or distribution of the rent payable in respect thereof, shall

not be binding on the landlord, unless it is made with his express consent in writing. S. 17, therefore, provides that an heir, as well as a transferee, even of a *part* of a permanent tenure, is entitled to compel the landlord to recognise him under Ss. 15 and 17 of this Act, although in the absence of a written consent as required by Sec. 88 the landlord is not bound to recognise any subdivision of the tenure or distribution of rent (11 C. W. N. 217 ; 13 C. L. J. 267 27 Cal. 545.)

What is the rule relating to the devolution of an absolute hereditary mukarari tenure on the death of the tenure holder without heirs? B. L. 1922(a). A, a zemindar grants an absolute hereditary mukarari tenure in favour of B who dies leaving no heirs. Will the tenure revert to the zemindar or will the Crown take it by escheat? Give reasons. B. L. '23 (b), 1925 (b), 1914 (a).

Escheat—On failure of heirs of the tenure-holder, a permanent tenure escheats to the Crown and does not revert to the original grantor or his heirs (1 Cal. 391).

Surrender and Abandonment—There is no provision for surrender and abandonment of a tenure though there is such a provision with respect to a holding of a raiyat or under-rayat (Ss. 86, 87, 48G). So it seems that a tenure can not be surrendered except by consent of the landlord. (Sen) Permanent tenure once created cannot ordinarily be put an end to at the option of the tenure-holder. It is not open to him to throw up the tenure and escape from the liability to pay rent. (30 W. R. 383 ; 9 Cal. 671).

Mineral rights—A permanent tenure-holder has no right in the sub-soil unless expressly granted by the lease and the sub-soil is made the subject matter of the grant. (47 Cal. 95) The mere fact of a lease being permanent, transferable and heritable does not necessarily carry with it the right to the minerals. (29 C. W. N. 725 ; 44 Cal. 585 ; 50 C. L. J. 30 P. C.)

Sub-letting of permanent tenures—Sec. 179 prescribes that "nothing in this Act shall be deemed to prevent a holder of a permanent tenure in a permanently-settled area from granting a permanent *mukarari* lease on any terms agreed on between him and his tenant."

CHAPTER IV. Raiyats holding at fixed rates. (S. 18).

Note—This Chapter deals with the rights and liabilities of the raiyats holding at a rent or rate of rent fixed in perpetuity.

Incidents of holdings at fixed rates.

1. Incidents of holdings at fixed rates.—(1) A raiyat holding at a rent, or rate of rent, fixed in perpetuity—

What are the rights attaching to the holding of a raiyat who holds at a rent or rate of rent fixed in perpetuity?
B. L. 1904.

(a) shall be subject to the same provisions with respect to the transfer of, and succession to, his holding as the holder of a permanent tenure,

(b) shall not be ejected by his landlord, except on the ground that he has broken a condition consistent with the provisions of this Act, and on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected,

(c) shall be deemed to be a settled *raiayat* of the village if he complies with the conditions set forth in S. 20; and

(d) shall be entitled—

(i) to plant,

(ii) to enjoy the flowers, fruits and other products of,

(iii) to fell, and

(iv) to utilize or dispose of the timber of,

any tree on the land comprised in his holding."

(2) The provisions of sections 23A to 38 (both inclusive) shall not apply to *raiayats* holding at fixed rates, even though such *raiayats* have a right of occupancy in the lands of their holdings. (S. 18).

Note—This section has been amended by Act IV of 1928 by the addition of clauses (c) and (d) and Sub-sec. (2). The amendments make it clear (1) that a raiyat at a rent or rate of rent fixed in perpetuity can acquire the status of a

settled raiyat of a village by complying with the provisions of S. 20 [Sub-sec.(1)Cl.(c)] *(ii)* that he has rights to the trees on the land comprised in his holding [Sub-sec.(1),cl. (d)] and *(iii)* that Ss. 25A to 38 do not apply to him, even if he may have a right of occupancy. [Sub-sec. (2)]

Scope of the section—Sec. 18 merely declares the general status of raiyats holding at fixed rates, and must be read with Sec. 50 which embodies the rules and presumption relating to fixity of rent.

"Rent or rate of rent fixed in perpetuity"—A raiyat whose rent or rate of rent is fixed in perpetuity is a raiyat at fixed rate. A raiyat paying as rent a fixed quantity of paddy is a raiyat at fixed rent. (37 C. L. J. 52 ; 36 C. L. J. 220 ; 63 I. 592). When rent was originally fixed at the rate of 2 as. *per* Bigha and subsequently on the discovery of an additional area the excess area was assessed at 2 as. *per* Bigha and it was agreed that on the discovery of further excess land the same would be assessed at the same rate, *held* that the rent was fixed in perpetuity at 2 as *per* Bigha. (35 C. L. J. 138).

Transfer and Succession—Sec. 18 does not make all the incidents of a permanent tenure applicable to a raiyat holding at fixed rate, but makes only the provisions with respect to *transfer* (Sec. 11) and *succession* (Sec. 15) applicable. (5 C. L. J. 413). [Read Secs. 11—17 of the last Chapter and notes thereunder.] The Provisions as to *enhance "n" of rent* have no application here because the rent or rate of rent is fixed in perpetuity.

Transferee of a share of a holding at fixed rate entitled to be recognised as a tenant.

By the extension of Secs. 11—17 to raiyati holdings at fixed rates, they are made *hereditary*, *transferable* and *bequeathable* and such raiyats are made liable to register all voluntary transfers and notify all successions and they have to pay the landlord's fees. The law also recognises the transfer of a share of a holding at fixed rate subject, however, to the provisions of Sec. 88 and entitles the transferee to claim to

be regarded as one of the tenants in respect of the holding (24 Cal 433). The word "transfer" in Cl. (a) includes lease, and so a raiyat at fixed rent in granting leases is not governed by S. 85 of the Act, as S. 18 controls S. 85. (25 C. W. N. 9 ; 19 C. W. N. 1127).

Ejectment—Raiyats at fixed rates are also in the same position as tenure-holders as regards ejectment except that if a raiyat holding at a fixed rate of rent is liable to ejectment for breach of a condition of his contract, that condition must be consistent with the provisions of this Act ; whereas, in the case of a tenure-holder similarly liable to ejectment, the condition the breach of which renders him liable to ejectment, needs only be consistent with the provisions of this Act, *if made after its commencement*. (*Vide* Sec. 10).

Clause (b) of Sec. 18 restricts the right of the landlord to eject this class of raiyat from his holding to the case of breach of a condition consistent with the provisions of this Act on breach of which he had contracted that he should be subject to ejectment. In other words, the clause requires two elements before a raiyat holding at a fixed rate can be ejected :—(1) that there should be a condition in the contract between the parties on breach of which he should be liable to ejectment, and (2) that the condition should be consistent with the provisions of this Act whether the contract was made before or after the commencement of the Act. [It will be noticed that this latter reservation does not apply to permanent tenure-holders if the contract was made *before* the commencement of the Act.] Thus a condition by which a raiyat holding at a fixed rate would be rendered liable to ejectment for arrears of rent is null and void, such condition being inconsistent with Sec. 65 of this Act. There is no provision in the Act for ejectment of raiyats at fixed rates on the ground of user of the land in a manner which renders the land unfit for the purposes of the tenancy, similar to that in S. 25 Cl. (a) which applies in the case of occupancy-raiyats.

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Can a raiyat at fixed rate ever be an occupancy raiyat?
B. L. 1918(a).

Fixed raiyat, if can acquire status of settled raiyat or right of occupancy:—Under the old law (Acts X of 1859 and VIII B. C. of 1869), a fixed raiyat, if he was in possession of the land for 12 years continuously as a raiyat became an occupancy raiyat as well. So, Sec. 37 of the Revenue Sale Law speaks of an occupancy raiyat at fixed rate. According to Sec. 19 of the B. T. Act, a person who had an occupancy right in respect of any land before the passing of the Act shall have a right of occupancy in that land. So, fixed raiyats, who had occupancy right before the passing of the B. T. Act, are still occupancy-raiyats. Thus in *Ichhamoyi v. Kailas Chandra* (18 C. W. N. 358) it has been held that a raiyat at fixed rate could acquire a right of occupancy under the old law and as such the said right continued after the Bengal Tenancy Act under Sec. 19. Similarly, it has been held in *Likhi Charan v. Hamid Ali* (27 C.L.J. 284) that a raiyat who acquired a right of occupancy before the passing of the Bengal Tenancy Act can retain the privileges of an occupancy raiyat although his rent has been fixed in perpetuity by virtue of which he becomes a raiyat holding at a fixed rate. The ruling in 8 C. W. N. 251, 860 and 21 Cal. 129 also are to the same effect. But decisions are conflicting as to whether a fixed raiyat can acquire a right of occupancy or the status of a settled raiyat under the present Act. In *Bhutnath v. Surendra* (13 C. W. N. 1025 ; 11 C. L. J. 98) it has been held that under the present Act, a raiyat at fixed rate does not acquire the status of a settled raiyat or a right of occupancy by occupation of the land for 12 years. In *Ichhamoyi v. Kailash* (18 C. W. N. 358) it has, however, been decided that the case *Bhutnath v. Surendra* is no authority for holding that a person who claims the higher status of a raiyat at fixed rate cannot, if the claim is disallowed, fall back upon and establish, if he can, the lower status of an occupancy raiyat. In *Abdul Gani v. Mobbulali* (20 C.W.N. 185) it has been held that a person who takes the tenancy originally as a raiyat at fixed rate may not thereby acquire

an occupancy right, but a person who has already acquired an occupancy right, cannot by obtaining a grant of fixed rent lose that occupancy right. But it has been held in *Sarbeswar v. Bejoychand* (26 C. W. N. 15 ; 34 C. L.J. 233 ; 49 Cal. 280) that a raiyat at fixed rate may become a settled raiyat of the village under Sec. 20 of the B. T. Act. and thus acquire a right of occupancy within the meaning of S. 21. Similarly, in *Tarini Charan v. Srish Chandra* (32 C. W. N. 587) it has been held that a raiyat holding at a fixed rent may acquire the right of occupancy and so an occupancy raiyat may acquire the status of a raiyat at fixed rent. The above conflict of decisions has, however, been set at rest at by Act IV of 1928 by the insertion of Cl. (c) of Sub-sec. (1) which clearly lays down that a raiyat at a fixed rent may acquire a right of occupancy in the lands comprised in his holding if he complies with the conditions set forth in Ss. 20 ; but the provisions of Ss. 23-A to 38 shall not apply to such a raiyat. [Sub-S. (2)].

Protected interest—The interest of a raiyat at fixed rent is a protected interest under new clause (f) of S. 160. Prior to the insertion of this clause by Act IV of 1928 there was a conflict of judicial opinion on the question whether the interest of a raiyat at fixed rent was a protected interest or not. In *Bhutnath v. Surendra* (*supra*), it was held that the interest of a raiyat at fixed rent was not a protected interest. The contrary view was taken in *Sarbeswar v. Bejoychand* (*supra*). In *Midnapore Zemindary Company v. Sadhumoni* (54 Cal 681) it was held that the right of an occupancy raiyat who subsequently acquired the right to hold at fixed rent continued to be a protected interest within the meaning of S. 160 B. T. Act.

Right to trees—Cl. (d) inserted by Act IV of 1928 makes it clear that a raiyat at fixed rent has rights to the trees on the land comprised in his holding. Even prior to Act IV of 1928, it was held in some cases that a raiyat at a

fixed rent had the right to cut and appropriate trees. (21 C. W. N. 636 ; 76 I. C. 990).

CHAPTER IV.-A. Provisions as to transfers of tenures and holdings and landlord's fees. (Ss. 18-A—18-C).

Saving as to statement in instruments of transfer where landlord not a party.

1. Notwithstanding anything contained in section 13 of the Indian Evidence Act, nothing contained in any instrument of transfer to which the landlord is not a party shall be evidence against the landlord of the permanence, the amount or fixity of rent, the area, the transferability or any incident of any tenure or holding referred to in such instrument. (S. 18A).

2. The acceptance by a landlord of the landlord's fee payable under Chapter III or Chapter IV in respect of any tenure or holding shall not operate—

- (a) as an admission of the permanence, the amount or fixity of rent, the area, the transferability or any incident of such tenure or holding, or
- (b) as an express consent under section 83 to the division of such tenure or holding, or to the distribution of the rent payable in respect thereof. (S. 18B).

Forfeiture of of unclaimed landlord's fee.

3. All landlord's fees and landlord's transfer fees deposited with the Collector before or after the commencement of the Bengal Tenancy (Amendment) Act, 1928, under Chapter III, IV or V and all fees deposited with the Collector under sub-section (1) of section 48H shall, unless accepted or claimed by the landlord within five years from the date of service of notice, be forfeited to the Government to be credited to the District Boards within the respective jurisdictions of which such fees accumulate. (S. 18C).

CHAPTER V.—Occupancy raiyats. (Ss. 19—40)

This is one of the most important chapters of this Act. It deals with the rights and liabilities of the occupancy raiyats and the settled raiyats.

A—General (Ss. 19—22),

1 (1) Continuance of existing occupancy rights.—Every raiyat who immediately before the commencement of the Bengal Tenancy Amendment Act of 1928 has, by the operation of any enactment, by custom or otherwise, a right of occupancy in any land, shall, when that Act comes into force, have a right of occupancy in that land

Right of occupancy acquired under the old law continues.

(2) The exclusion from the operation of this Act by a notification under clause (ii) or clause (iii) of Sub-Sec. 3 of Sec. 1 of any area or part of any area referred to in those clauses shall not affect any right, obligation or liability previously acquired, incurred or accrued in reference to such area or part thereof. (S. 19).

Note.—This section preserves in express terms all the existing rights of occupancy already acquired before the commencement of Act IV of 1928 either under the express provisions of any of the previous enactments, under custom or otherwise. So, if a raiyat had a right of occupancy, whether by virtue of custom or any enactment or otherwise, immediately before the commencement of Act IV of 1928, such right would continue under this Act. Thus, a raiyat at fixed rate could acquire a right of occupancy under the old law and as such the said right continues under this Act, (18 C. W. N. 358). Similarly, a right of occupancy acquired in chakran land (44 C. L. J. 271) or in an undivided share of a holding under Act VIII B. C. of 1869, continues under this Act. (8 C. W. N. 751). The Act, of course, does not revive rights which had already been extinguished (6 C. L. J. 149). Then again, although the Act does not apply to any area constituted a Municipality or to the town of Calcutta, (*Vide* Sec. 1) such exclusion from its operation, will not affect any right, obligation or liability previously acquired, incurred or accrued with reference to such area; consequently, if any right has already accrued in any land which is subsequently made a municipal area or included within the town, of

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Calcutta, such right shall continue to exist and the provisions of this Act will apply to such land, inspite of the provisions of Sec. 1. (32 C. W. N. 1007)

"By the operation of any enactment."—These enactments are Act X of 1859 and Act VIII (B. C.) of 1869. These Acts provided as follows : "Every raiyat who shall have cultivated or held land for a period of 12 years shall have a right of occupancy in land so cultivated or held by him whether it be held under a *puttah* or not, so long as he pays the rent payable on account of the same ; but this rule does not apply to *khamar*, *nijote* or *sir* land belonging to the proprietor of an estate or tenure and let out by him on lease for a term of years or from year to year nor (as respects the actual cultivators) to land sublet for a term of years or from year to year by a raiyat having a right of occupancy. The holding of the father or other person from whom a raiyat inherits shall be deemed to be the holding of the raiyat within the meaning of this section."

What is a
right of
occupancy ?
How is it
acquired ?
B. L. 1891,
1896.

Right of occupancy.—This has been nowhere defined in the Act. Mr. Field defines it as follows : "It is the privilege of continuing to hold the land, in which such right has been acquired, as long as the rent legally demandable for the same is paid." It is rather in the nature of a personal privilege, than a substantive proprietary right. (22 W. R. 27, F. B.) Rights of occupancy can not be created by grant or contract. (2 Pat. 414). It is a statutory right which is not conferred by a gift from a proprietor. (31 C. W. N. 24 P. C. ; 51 Cal. 631 P. C.)

Define a
settled raiyat.
B.L. 1897,
1899, 1902,
1913 (a),
1916 (b).
How is the
status of a
settled raiyat
acquired ?

2. Definition of settled raiyat.—(1) Every person who, for a period of 12 years, (whether wholly or partly before or after the commencement of this Act) has continuously held as a raiyat land situate in any village (whether under a lease or otherwise) shall be deemed to have become, on the expiration of that period, a settled raiyat of that village.

Note.—Sec. 20 prescribes the mode by which a cultiva-

tor might become a settled raiyat of a particular village, while the succeeding sections deal with his rights and status. This section which is the result of an attempt to 're-habilitate' the *khudkhasht* or the "resident raiyat" of the Regulations in his established hereditary right in the land he cultivates, so long as he continues to pay the rent justly demandable from him with punctuality and to give reasonable security to him in the occupation and enjoyment of his land has made a great change in the rent law of the province. Under the old law it was necessary for a raiyat to have been in occupation of the same land for the statutory period of 12 years before he could acquire a right of occupancy; and if he took up fresh land in the village the fact that he had held some other land in the village for more than twelve years did not give him any right of occupancy in his new acquisition till he had held it for 12 years. Landlords sometimes took advantage of the law and prevented *raiya's* from acquiring a right of occupancy by changing the lands of their holdings before the expiration of the statutory period. This device has been put a stop to by the present Act. Under the present law, in order to become a settled raiyat of a village, the raiyat must have held "as a raiyat" some land in the village, continuously for a period of 12 years wholly or partly, before or after the commencement of this Act and either under a lease or otherwise. It is not necessary, therefore, that he should continuously hold the same land. But this rule does not apply to *chur* or *dearah* land or land held under the custom of *utbandi*, which must still be held for 12 years before a right of occupancy can be acquired therein. (*Vide* Sec. 180 *post*) Nor does it create a right of occupancy in favour of a raiyat who holds the landlord's private lands under a contract for a term years or from year to year.

Is it transferable? Has a settled raiyat right of occupancy in all kinds of land held by him in the village for less than 12 years.
B.L. 1919(a).
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"Held land as a raiyat."—Tenants could acquire rights of occupancy even although the person or persons under whom they held the land had no title to it. (19 W. Discuss if occupancy right can be acquired—)

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(a) under a trespasser, (b) by a trespasser, (c) in a proprietor's private land, (d) in the homestead land of a raiyat and (e) by an under-raiyat ?
R.I. 1916/b).

R. 338 : 3 Cal 560) See notes under S. 3 (17) and S. 5 *ante*. Accordingly, if a person in wrongful possession of land let it out to a raiyat who held it for the full statutory period upon payment of rent, the raiyat acquired the statutory right. But although rights of occupancy could be acquired under a person having no title in the land, a trespasser himself cannot acquire any such right. In order to have the benefit of the enactment, he must be a *bonafide* raiyat. Accordingly the possession of a trespasser or a middleman or of a person who held not in his own right, but merely as a servant of another, is not regarded as giving rise to a right of occupancy nor can the possession of a lessee, however long continued, or of a co-shareholder holding under another co-shareholder give birth to that right. Nor can possession obtained and continued by fraud create any right of occupancy. It is not, however, necessary that the raiyat should himself cultivate the land in his occupation. If the land is acquired primarily for that purpose, cultivation carried on by any one of the methods indicated by Sec. 5, Sub-Sec. (2), would impress on him the status of a settled raiyat of the village ; in other words, so long as he does not sever himself entirely from the cultivation of the land and make himself a mere receiver of rent, he retains the character of a raiyat. (Finucane). To use the land as a raiyat does not necessarily require that it should be cultivated ; it may be used as a homestead within the meaning of S. 182 (72 I. C. 640).

An occupancy right can not be acquired by a person who is in possession as a *ticcadar*, (62 I. C. 622). A raiyat may acquire a right of occupancy by holding over. (33 Cal. 459). Where a tenant holds over after the expiration of his lease he does so on the terms of the lease. (2 C. W. N. 303). A raiyat holding over may acquire a right of occupancy and he cannot be ejected from the agricultural lands if he has acquired a right of occupancy while so holding over after an expired lease. A suit for ejectment of an occupancy raiyat

from lands included in his lease for *non-agricultural* purposes after the expiry of the lease is maintainable but the tenant cannot be ejected from the *agricultural* lands if he has acquired a right of occupancy therein (33 Cal. 459.)

Raiyats at fixed rent—See notes under S. 18 at p. 70 *supra*.

Under-raiyat—Prior to Act IV of 1928, under-raiyats could acquire occupancy rights by custom or usage. This customary right has been recognised by statute in S. 48G.

Occupancy right in undivided share of a holding.
—Under Act VIII B C. of 1869 a raiyat could acquire a right of occupancy in an undivided share of a holding and it seems that the status of a settled raiyat and consequently a right of occupancy may be acquired in respect to an undivided share of land under this Act. "The word used in this section is not *holding* nor the words used are *parcel of land* but the word used in this section is *land*; and the word *land* includes an undivided share of land; it, therefore, seems that the status of a settled raiyat and consequently a right of occupancy may be acquired in respect to an undivided share of land, although the tenancy in such undivided share may not amount to a *holding* as defined in the Act. Take the following example: X and Y are the owners of a certain estate; X grants a raiyati lease of his one-half share of the land to B, and Y grants a raiyati-lease of his one-half share of the same plot to A. A and B under these circumstances may enjoy the land either by partition or they may jointly cultivate and divide the crops. If they jointly cultivate and hold the land for 12 years continuously, each of them will be a settled raiyat of the village. The principle underlying the decision in the case of *Sarifennussa v. Safarabdi* (16 C. W. N. 276, notes-portion; 21 C. L. J. 592 at p. 295) will show the correctness of the view of law stated above. Sub-Sec (4) of this section also favours the aforesaid view of the law." (*Sen's B. T. Act*, pp. 140 foot-note.) Now that the definition

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- .. of "holding" has been amended by Act IV of 1928 so as to include an undivided share of a holding (provided it forms the subject of a separate tenancy) there can no longer be any question as to the acquisition of occupancy right in an undivided share of a holding (provided it forms the subject of a separate tenancy.)

(1 A). *A person shall be deemed, for the purposes of this section to have continuously held land in a village, notwithstanding that such village was defined, surveyed, and recorded as, or declared to constitute, a village at a date subsequent to the commencement of the said period of 12 years.

(2). A person shall be deemed for the purposes of this section, to have continuously held land in a village notwithstanding that the particular land held by him has been different at different times.

Note.—Under the old law a right of occupancy could be acquired in a particular plot of land only by holding the *same* plot for 12 years. Under the present law, however, this is not necessary. Now a raiyat is a settled raiyat of the village and has an occupancy right in *all* lands in the village in which he, or the person whose heir he is, has held *any* land for 12 years. [But it is doubtful whether a raiyat can become a settled raiyat by holding during 12 years different plots of land in the same village *under different landlords* or whether he must hold his land under one and the same landlord. "From the phraseology of the enactment, however, it seems to be clear that a cultivator holding different plots of land under different landlords in *the same village* for the statutory period fulfils the condition required by the law." (Finucane).]

(3). A person shall be deemed, for the purposes of this section, to have held as a raiyat any land held as a raiyat by a person whose *heir* he is.

Note.—In computing the period of 12 years for the acquisition of the right of a settled raiyat, raiyats are entitled

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to add to their own possession the time during which the person from whom they inherited the land had been in occupation. It is only the occupation of the father or other person from whom a raiyat *inherits* that could be counted to make up the period of twelve years. The occupation of a predecessor-in-interest or a vendor could not be so counted.

(1). Land held by two or more co-sharers as a raiyati-holding shall be deemed, for the purposes of this section, to have been held as a raiyat by each such co-sharer.

Note.—The status of a settled raiyat can be acquired by a cultivator who has held any land in the particular village for twelve years continuously, either by himself, or jointly with others for the whole period or part of the time. Thus when two or more persons have held land in the village jointly or partly jointly and partly severally, each of them acquires the status of the settled raiyat and acquires the right of occupancy in any land let to him separately.

(5) A person shall continue to be a settled raiyat of a village as long as he holds any land as a raiyat in that village *and for one year* thereafter.

Note.—The status once acquired is not lost by mere abandonment of the holding and removal from the village unless the absence from the village lasts for more than a year. So that a settled raiyat who has given up his holding and removed to another locality, if he return to the village within the space of one year and takes up another holding, although under a different landlord, will not lose his status.

(6) If a raiyat recovers possession of land under Sec. 87, he shall be deemed to have continued to be a settled raiyat notwithstanding his having been out of possession for more than a year.

Note.—If a raiyat holding land in a particular village is evicted by his landlord and he recovers possession under the provisions of Sec. 87 of the Act, the period during which he

was so out of possession will count in his favour, even though it may exceed a year.

(7) If in any proceeding under this Act, it is proved or admitted that a person holds any land as a raiyat, it shall, as between him and the landlord under whom he holds the land, be presumed for the purposes of this section, until the contrary is proved or admitted, that he has for twelve years continuously held that land or some part of it as a raiyat. (S. 20).

Note—The effect of the presumption under this subsection is to put the *onus* of proof on the landlords to disprove the assertion on the part of their raiyats of their having held land continuously for twelve years. The presumption in Sec. 20 (7) is however for the purpose of that section and it cannot be extended for the purpose of Sec. 180. Consequently the presumption does not apply to the occupants of *chur* or *dearali* lands who, if they allege that they have been for 12 years in continuous possession, must prove the allegation (34 Cal. 444).

Neither a suit by a tenant to recover lands from the landlord of which he alleges he has been dispossessed nor a suit for rent is a *proceeding* under the B. T. Act within the meaning of Cl. 7, Sec. 20 (16 C. W. N. 398 ; 35 Cal. 331) ; so much so, the presumption under this section does not arise in such suits. (14 C. W. N. 335 ; 11 C. L. J. 364).

When does a "settled raiyat" acquire a right of occupancy in any land in his village ?
Are there any exceptions to this rule ?
B. L. 1899.
what are the rights of a settled raiyat ?
B. L. 1817,
1913 (a),
1918 (b).

3. (1) Every person who is a settled raiyat of a village shall have a right of occupancy in all land for the time being held by him as a raiyat in that village.

(2) Every person who being a settled raiyat of a village at any time between 2nd March, 1883 (the date on which the motion was made in the Legislative Council for leave to introduce the Bengal Tenancy Bill) and the commencement of this Act shall be deemed to have acquired a right of occupancy in that land under the law then in force, but nothing in this sub-section shall affect any decree or order passed by a Court before the commencement of this Act (S. 21).

Note—A settled raiyat of a village acquires a right of occupancy in the other lands which he holds as a raiyat. (19 C. W. N. 149). But if a person is a tenure-holder in respect of certain land in a village, the fact that he is a settled raiyat of any particular land in the village will not give him a right of occupancy in the other lands which he holds. (7 C. L. J. 475).

Sub-sec. (2) has retrospective operation and should be read with section 178 *post*. The object of this sub-section is to protect raiyats who may have been induced, while the Bill was before the Council, to contract themselves out of their rights of occupancy conferred by the Act. This object is given further effect to in Sec. 178.

Distinction between Settled raiyats and Occupancy raiyats—There is a distinction between an occupancy raiyat and a settled raiyat, for although every settled raiyat has occupancy-raiyat, every raiyat having right of occupancy need not necessarily be a settled raiyat of the village where his holding is situate. An occupancy right may be acquired by purchase while the status of a settled raiyat is acquired by cultivating any land in the village as a raiyat for 12 years or by inheritance from a raiyat who has done so. The status of a settled raiyat as defined in Sec. 20 cannot be transferred and consequently *every settled raiyat has a right of occupancy but every occupancy raiyat is not necessarily a settled raiyat.* (3 C. L. J. 285). Suppose A is a settled raiyat and consequently an occupancy raiyat, and suppose B purchases his holding; as soon as B purchases it he becomes an occupancy raiyat, although he is in possession of the holding for one day; So he is an occupancy raiyat without being a settled raiyat. A holder of an occupancy right who is not a settled raiyat of a village merely has occupancy right in the holding which he has acquired by purchase. If he takes up other lands for cultivation, he will not obtain occupancy right in

What is the distinction between a settled raiyat and an occupancy raiyat?
P. L. 1918(b),
1925 (a),
1923 (a),
1925 (b),
1926 (b),
P. L. 1912.

Are all occupancy raiyats settled raiyats?
B. L. 1899,
1918 (a).

“All settled raiyats are occupancy raiyats, but all occupancy raiyats may not be settled raiyats.”
Explain and examine the

correctness or otherwise of this proposition.
B. L. '14 (a), 1920 (b).

Show that every occupancy raiyat need not necessarily be a settled raiyat.
B. L. '16 (b).

them, until he has held lands in the village as a raiyat for 12 continuous years. A settled raiyat on the other hand obtains a right occupancy directly he takes up any fresh land. In *Kuldip v. Chatur Singh* (3 C. L. 285) Rampini J. observes:—"An occupancy right may be acquired by purchase but the right of a settled raiyat can only be acquired by a continuous holding of land in the village for 12 years. The mere fact that a person has an occupancy holding in a village does not give him a right of occupancy in his other holding in the same village unless he is also a settled raiyat and the status of a settled raiyat can not be transferred and consequently though every settled raiyat has a right of occupancy every occupancy raiyat is not necessarily a settled raiyat."

Define a settled raiyat. Is it necessary that an occupancy raiyat should necessarily be a settled raiyat?
B. L. 1921 (suppl.)

"A raiyat who has held any land in a village for 12 years by himself or partly by himself and partly through the person from whom he has inherited is a settled raiyat of that village. He has occupancy right not only in that land, but also in all other lands in that village forming part of his holding or which he may at any time add to his holding. His status as a settled raiyat passes to his heir but it cannot be sold. Thus all occupancy-raiyats who have acquired the occupancy right through the occupation of land for 12 years or by inheritance from one who held for that period should be recorded as settled raiyats. The only remaining class of occupancy raiyats are those who have purchased the occupancy right, but have not held the land to which it is attached for 12 years or who have inherited from such purchasers, the term of 12 years from the purchase being still unexpired. These alone should be recorded as occupancy raiyats." (Settlement Manual).

Are there any cases where a raiyat cannot at all acquire occup-

Restrictions on the acquisition of occupancy rights.—Notwithstanding the provisions of this section occupancy rights cannot be acquired in a proprietor's private lands (known in Bengal, as *khamar, nij* or

nij-jote, in Behar *sirāt*, *nij*, *sir* or *khamat*) when such lands are let under a lease for a term of years or under a lease from year to year (S. 116). As has been already pointed out, settled raiyats do not acquire occupancy rights in *chur*, *dearūh* or *utbandi* lands until they have held the same land for 12 continuous years (S. 180). Occupancy-rights cannot be acquired in *ghatwali* lands also. "I think that upon principle, having regard to the nature of *Ghatwali* lands, the acquisition of occupancy right in these lands is inconsistent with the incidents of such tenures." (*Per. Maclean C. J.* in 33 Cal. 630)* A raiyat who has a right of occupancy has the same right in land accreted to his *jote* as he has in the *jote*. An occupancy raiyat is entitled to the benefit of Sec. 4, Cl. (1) of Reg. XI of 1825, and when there is an accretion to his holding, he is entitled to hold the lands as an accretion to his *jote*. (21 Cal. 233). But where there is no right of occupancy in the parent land, no such right can annex to the accretion (33 Cal. 444).

any right and any cases where he may do so under special condition ?

B. L. 1915(b)

If a land accretes to the holding of an occupancy raiyat, who is entitled to it ?
B. L. 1906.

The acquisition of occupancy right is restricted to land held by the raiyat in the village or villages in which he is a settled raiyat. But, as already observed, no such right can be acquired under the Act in land which is neither agricultural nor horticultural and is situated in a town or suburb and used for trading or residential purposes. (6 Cal. 652). As regards a right of occupancy in *homestead* lands under the present Act, if the homestead be part of an agricultural holding—the tenant can acquire the right of occupancy; but if it is not part of an agricultural holding—he may acquire a right of occupancy in the homestead land subject to the provisions of S. 182 *post*.

* Rights of occupancy could be acquired in *Chakran*, *Ghatwat* and *Chaukidari-chakran* lands under the old law and where so acquired they would be continued under the present Act. Such rights cannot, however, be acquired under the present Act.

a kabuliyat executed in 1875 there as a stipulation that the raiyat should never acquire any right of occupancy in the holding. the contract valid? Will it make any difference if the kabuliyat is executed in 1890.

L. 1919(b).

Contracts barring acquisition of occupancy right.—This section has to be read with Sec. 178 *post*, which provides that (1) “nothing in any contract between a landlord and a tenant made before or after the passing of this Act (a) shall bar in perpetuity* the acquisition of an occupancy right in land or (b) shall take away any occupancy right in existence at the date of the contract;” (2) “nothing in any contract made between a landlord and a tenant, since the 15th of July, 1880 (the date of the Rent Commission’s Report) and before the passing of this Act, shall prevent a raiyat from acquiring in accordance with this Act, an occupancy right in land”; and (3) “nothing in any contract between a landlord and a tenant after the passing of this Act, shall prevent a raiyat from acquiring in accordance with this Act an occupancy right in land.” But where a lease is granted *bonafide* for the reclamation of waste land, the accrual of occupancy right can be barred till the expiry of the term of the lease; and where a landlord has reclaimed waste lands by his own servants or by hired labourer and then lets it out to raiyats, the accrual of occupancy right can be barred for 30 years. The accrual of occupancy right can also be barred in orchard or horticultural land, temporarily let out for cultivation with agricultural crops. (S. 178, Proviso).

4 Effect of acquisition of occupancy right by landlord.—When the immediate landlord of an occupancy holding is a proprietor or a permanent tenureholder and the entire interests of the landlord and the raiyat in the holding become united in the same person by transfer, succession or in any other way whatsoever, such person shall have no right to hold the land as a raiyat, but shall hold it as a proprietor or permanent tenureholder, as the case may be. (But nothing in this sub-

* An agreement before the passing of the B. T. Act that a tenant would not acquire a right of occupancy during his life-time is valid and does not come within the prohibitory terms of S. 178, sub-sec. 1 (a), or sub-sec. 3 (a), (33 Cal. 136).

section shall prejudicially affect the rights of any third person).

(2) Nothing in this section shall prevent the acquisition by transfer, succession or in any other way whatsoever of the holding of an occupancy-*raiayat* or share or portion thereof, together with the occupancy rights therein by a person who is, or becomes, jointly interested in the lands as a proprietor or a permanent tenure holder :

Provided that a co-sharer landlord who purchases a holding of a *raiayat* at a sale in execution of a *fent* decree or of a certificate under this Act shall not hold the land comprised in such holding as a *raiayat* but shall hold the land as a proprietor or tenure-holder, as the case may be, and shall pay to his co-sharers a fair and equitable sum for the use and occupation of the same. The rent payable by the *raiayat* to the other co-sharer landlords at the time of the transfer shall be regarded as the fair and equitable sum until otherwise determined in accordance with the principles of this Act regulating the enhancement or reduction of the rents of occupancy-*raiayat*.

Note.—The old Sec. 22 prevented any landlord from holding lands in his own estate or tenure as a *raiayat*. This was considered unfair in the case of co-sharer landlords. So long as under-*raiayats* have substantial rights there is no reason why co-sharer landlords should not hold as *raiayats* holdings, of which they have come into possession otherwise than by exercise of their own legal powers to realise rents in arrear. Hence the old Sub-sec. (2) has been omitted and a proviso to the new sub-sec. (2) of Sec. 22 takes its place. The new Sub-sec (2) emphasises the change in the law in favor of co-sharer landlords.

What interest does a co-sharer landlord acquire when he purchases an occupancy holding ?
B.L. 1916(b).

(3). A person holding land as a temporary tenure-holder or farmer of rents shall not, while so holding, acquire a right to hold as a *raiayat* any land comprised in his temporary tenure or farm.

to what extent has the doctrine of merger been adopted in the B. T. Act? State particulars.

B. L. 1910(a).

What provisions have been made in the B. T. Act as to the merger or extinction of the rights of occupancy? B. L. 1897. What is the effect of purchase by one of several joint landlords of an occupancy right (i) as regards the landlord's interest, (ii) as under raiyat? B. L. 1896.

Explanation.—A person having a right to hold the lands of an occupancy holding as a raiyat does not lose it by subsequently holding the land as a temporary tenure holder or farmer of rent. (S. 22.)

Note.—This section enacts a rule of merger and is based on the maxim "*Nemo potest esse tenens et dominus*"—

a person cannot, at the same time, be both landlord and tenant of the same premises. This principle has, however, been abrogated by Act IV of 1928 in respect of a co-sharer landlord who acquires a raiyati holding otherwise than by purchase at a rent sale*. See new Sub-Sec (2).

Sub-sec. (1) deals with the union of the *entire* interests of the landlord and the raiyat in one and the same person. In such a case the subordinate interest becomes merged in the proprietary interest. And this would be the result whether the landlord acquires the raiyat's interest or the raiyat the landlord's. (But there is a reservation in favour of third persons, namely that though as between the transferor and the transferee, the occupancy right shall cease to exist, the result shall not affect prejudicially the rights of any third person.)

Sub-sec. (2) read with the Proviso enacts that if a co-sharer landlord acquires an occupancy-holding or a share or portion thereof *otherwise than by purchase at a sale in execution of a rent-decree or of a certificate under the Act*, the occupancy right shall not become merged in the proprietary interest † [Sub-sec. (2)]. But if a co-sharer

* The law was different before Act IV of 1928. Prior to the amendment of 1928, if an occupancy-right in land was transferred to a co-sharer landlord (proprietor or permanent tenure-holder) the occupancy-right would merge in the superior interest of the landlord and would thus cease to exist and such co-sharer landlord should have no right to hold the land as a raiyat but should hold it as a co-proprietor or joint permanent tenure-holder, subject to payment of a fair and equitable sum for the use and occupation of the same. [Old sub-sec. (2)]

† It also seems that if an occupancy-raiyat acquires a share of the landlord's right, the landlord being a proprietor or permanent tenure-holder, the

landlord purchases an (*entire*) occupancy-holding *at a sale, in execution of a rent-decree or of a certificate under the Act*, the occupancy-right shall become merged in the proprietary interest and the co-sharer landlord shall hold the land comprised in the holding not as a raiyat but, as a landlord subject to payment of a fair and equitable sum for the use and occupation of the land to his co-sharers. [Proviso to Sub-sec. (2)]

Sub sections (1) and (2) have no application to non-permanent tenure-holders. For one class of such tenure-holders sub-section (3) makes provision.

Sub section (3) coupled with the Explanation lays down that a temporary tenure-holder or farmer of rents shall not, *during the period of his lease*, acquire a right of occupancy in any land comprised in his temporary tenure or farm. [Sub-sec. (3)]. But a person having a right of occupancy in lands does not lose it by subsequently becoming a temporary tenure-holder or farmer of rents in respect of those lands. (Explanation).

There will thus be merger of the occupancy-right in the landlord's interest in the following three cases only :—(1) Where the *entire* interests of the landlord (proprietor or permanent tenure-holder) and of the raiyat become united in the same person. [Sub-sec (1)]. (2) Where a co-sharer landlord (proprietor or permanent tenure-holder) purchases an *entire* holding of a raiyat *at a sale in execution of a rent-decree or of a certificate under the Act*. [Proviso to Sub-sec (2)]. (3) Where the raiyati-interest in any land is acquired by a temporary-tenure-holder or farmer of rents within whose temporary tenure or farm such land is comprised. (But such merger would last only during

occupancy right would not cease to exist. "A person having occupancy right will not lose it on becoming a co-sharer proprietor or permanent tenure-holder. [Sub-sec. (2)]. Note the words "who is or becomes jointly interested" etc. (Mitter & Mukherjee, p. 109).

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the continuance of the temporary tenure or farm.) [Sub-sec. (3)].

There will be no merger in the following cases :—(1) Where a co-sharer proprietor or permanent tenure-holder acquires the *whole or part* of an occupancy-holding *otherwise than by purchase at a sale in execution of a rent-decree or a certificate under the Act*. [Sub-sec. (2)]; (2) Where an occupancy-raiyat acquires the interest of a co-sharer proprietor or permanent tenure-holder. [See footnote at pp. 86-87]. (3) Where an occupancy raiyat subsequently becomes a temporary tenure-holder or farmer of rents in respect of lands comprising the holding. [Explanation].

Summary :—The effect of the provisions of this section taken with the rule, *inclusio unius exclusio alterius*, (the express mention of the one is the exclusion of another) would appear to be :—

(1) If an occupancy right is acquired by the immediate landlord who is a *sole* proprietor or a sole permanent tenure-holder, the occupancy right ceases to exist irrespective of the mode of such acquisition. (2) If an occupancy right is acquired by the immediate landlord who is a part-proprietor or a part-permanent tenure-holder, the occupancy right ceases to exist if it is acquired by purchase at a sale in execution of a rent-decree or of a certificate under the Acts ; but it does *not* cease to exist, if acquired in any other mode of acquisition.* (3) If an occupancy right is acquired by the immediate landlord who is a sole or part temporary tenure-holder (or a farmer of rents), the occupancy right does *not* cease to exist. (4) If an occupancy-raiyat acquires the *whole* of the immediate landlord's rights, when the landlord is a proprietor or a permanent tenure-holder, the occupancy right ceases to exist. (5) If an occupancy-raiyat acquires only a *share* of the immediate landlord's interest when the land-

* The law was different before the B. T. Amendment Act IV of 1929. See footnote p. 86 *supra*.

lord is a proprietor or a permanent-tenure holder, the occupancy right does not cease to exist. (6) If an occupancy-raiyat acquires the whole or part of the immediate landlord's interest, when the landlord is a temporary tenure-holder (or a farmer of rents) the right of occupancy does *not* cease to exist. (7) A temporary tenure-holder or farmer of rents may not by holding land during the continuance of his temporary tenure or farm acquire any right of occupancy.

B.—Incidents of occupancy-right (Ss. 23—26 J).—

1. Right of raiyat in respect of use of land.—

When a raiyat has a right of occupancy in respect of any land, he may use the land in any manner which does not materially impair the value of the land or render it unfit for the purposes of the tenancy. * (S. 23).

Describe the main incidents of an occupancy tenancy.
B.L. 1891,
1897, 1900,
1902, '26(b).

Note.—This section must be read with S. 155 and with S. 178, sub-section (3), cl. (b), which declares that “nothing in any contract between the landlord and the tenant after the passing of this Act shall take away or limit the right of an occupancy raiyat to use land as provided by Sec. 23.”

Under the old law, the right of the tenant to use the land was restricted to the purposes for which the tenancy was created but under this section, the raiyat may use the land in any manner he pleases provided that such use (i) must not materially impair the value of the land; and (ii) must not render the land unfit for the purposes of the tenancy (e.g. digging earth for the purpose of brick-making, turning an agricultural land into an orchard etc.)

[In case (i) the landlord's remedy against waste which is complete, is a suit for damages; and against waste which

* This section has been amended by Act IV of 1928 by deleting the words “but shall not be entitled to cut down trees in contravention of any local custom” which occurred at the end of the section. Now, for occupancy-raiyats' rights in trees see new S. 23-A, *infra*.

is impending, is a suit for injunction restraining the raiyat from committing the waste. But if the waste is in violation of a condition carrying forfeiture, the landlord may also eject under Sec. 25. In case (ii) the landlord has, over and above the remedies by a suit for damages and for injunction, the right to sue for ejectment under Sec. 25. But whenever he sues under Sec. 25, he must comply with the provisions of Sec. 155 of this Act]

"Materially impair the value of tenancy"—These words should be read with S. 76 which provides that *all the contrary is proved*, construction of wells, tanks, water channels and other works for the storage, supply or distribution of water for the purposes of agriculture or for drinking or for the use of men and cattle employed in agriculture shall not be deemed to impair the value of the land or to render it unfit for the purposes of the tenancy [S 70 Sub-sec. (2), cl. (a) and Explanation.]

2. Right of occupancy-raiyat and landlord in trees—Subject to the provisions of S 23, when a raiyat has a right of occupancy in respect of any land, he shall be entitled—

- (i) to plant,
- (ii) to enjoy the flowers, fruits and other products of,
- (iii) to fell and
- (iv) to utilize or dispose of the timber of, any tree on such land. (S 23-A).

Note—This section has been inserted by Act IV of 1928. Under the old law, the rights of raiyats regarding trees were not clear and they were practically left to custom which is variable in different parts of the Province. The reference to customary rights in trees in Sec 23 has accordingly been deleted and the new Sec. 23A has been inserted definitely giving to the raiyat all rights in respect of trees on his land.

"Subject to the provisions of S. 23"—These words indicate that the right conferred on the occupancy-raiyats

by this section (S. 23A) is to be exercised in such a way as not to materially impair the value of the land or to render it unfit for the purpose of the tenancy.

Right to trees : Old law :—Under S. 23 as it stood before Act IV of 1928* a raiyat with right of occupancy might cut down trees on his land without his landlord's consent, unless there was a custom to the contrary, which it was for the landlord to prove (22 Cal. 74, 741 note.) The onus was on the landlord to show that a tenant with occupancy right was debarred from cutting down the trees in the land and not on the tenant to prove a custom giving him the right to do so.† But the right to appropriate them *when cut down* belonged to the landlord and the onus lay on the tenant to prove a custom giving him the right to sell the trees. (22 Cal. 742) In the absence of a custom to the contrary, the right to appropriate any trees on the land after they had been cut down was in the landlord ; this being quite a different thing from the right to cut down trees. (10 C. L. J. 25), As to the ownership of the trees themselves, the trees were the property of the proprietor of the land on which they grew though the tenant had a right to enjoy all the benefit that the growing timbers might afford him during his occupancy and to cut them down subject to a custom to the contrary (22 Cal. 742). The proprietor's rights were, however, subject to modification or complete extinction by contract or custom. As to trees grown by the tenant during his occupancy they would accede to the soil and become the property of the landlord on the termination of the tenancy unless the tenant used, during its subsistence, his right of removing the trees provided that right was not taken away by contract. (11 W. R. 226). Where a raiyat cut down and appropriated some *agacha* or

Discuss the right of an occupancy raiyat (i) to cut trees in holding and (ii) to the trees if they are cut down. B. L. 15 (b). 16 (b).

* See footnote at p. 89.

† In 22 Cal. 746-note, it was, however, held that the onus lay upon the tenant to prove a custom to cut down a mango tree.

valueless trees, it was *held* that the landlord suffered no damage and had no cause of action. (23 Cal. 854).

3. Obligation of raiyat to pay rent—An occupancy raiyat shall pay rent for his holding at fair and equitable rates. (S. 24).

"Fair and equitable rates"—See Ss. 27, 30, 35 and 38 *post.*

4. Protection from eviction—An occupancy-raiyat shall not be ejected by his landlord from his holding, except in execution of a decree for ejectment passed on the ground—

(a) that he has used the land comprised in his holding in a manner which renders it unfit for the purposes of the tenancy, or

(b) that he has broken a condition consistent with the provisions of this Act and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected. (S. 25),

Principle :—The principle on which this section is based is that the interest possessed by an occupancy-raiyat was created by the common law and custom of the country and not by any act of, or contract with, the landlord and therefore cannot arbitrarily be taken away by the latter. He can be divested of it only for the special reasons prescribed by law. (Finucane).

Note :—This section should be read with Secs. 65, 89, 155 and 178 (1) (c) *post.* [Before a tenant can be ejected on the grounds mentioned in this section, the landlord must serve a *notice* on the tenant specifying the misuse or breach complained of, and where the misuse or breach is capable of remedy, requiring the tenant to remedy the same and in any case to pay a reasonable compensation and no suit for ejectment can be brought unless the tenant has failed to comply within a reasonable time with the notice (Sec. 155). Under Sec. 178 (1) (c) "nothing in any contract made before or after the passing of the Act, shall entitle a land-

Upon what grounds can an occupancy raiyat be ejected by his landlord ?
B.L. 1925(b).
On what grounds may an occupancy raiyat be evicted ?
B.L. '98, '05, '07, '14(b), '17 (a) & (b) 1921 (a), 1919 (a) ; P. L. 1911.
What steps have to be taken by the landlord in order to eject an occupancy raiyat ?
An occupancy-raiyat entered into possession of his holding after the passing of the B. T. Act under a contract that he would cultivate indigo on his land on failure of which he would be lia-

lord to eject a tenant otherwise than in accordance with the provisions of the Act." Section 65 provides that an occupancy-raiyat shall not be ejected for arrears of rent and Sec. 89 provides that no tenant shall be ejected from his holding except in execution of a decree.] *The effect of these sections taken together is as follows :—*

(1) An occupancy-raiyat shall not be ejected except by suit, notwithstanding any contract to the contrary made either before or after the passing of this Act. (2) A suit for ejectment shall not lie if notice has not been served on him and a reasonable time has not expired after notice. It shall not lie except on the two grounds mentioned in this section. (3) An occupancy-raiyat shall not be ejected for arrears of rent at all, even if that be a condition of forfeiture in a contract made after the passing of this Act. (4) He may be ejected for breach of a condition carrying forfeiture, if such condition is consistent with the provisions of this Act, but only after failing twice (after notice and after decree) to remedy the breach and pay compensation under Sec. 155 where the breach is remediable. (5) He shall be ejected for breach of such a condition if the breach is irremediable. (6) He may be ejected for misuse, after such double failure to remedy the misuse and pay compensation when the breach is remediable. (7) He shall be ejected for misuse, if the misuse is irremediable. (Dr. Ray).

Clause (a). Wrong use of land :—What would amount to improper user of the land rendering it unfit for purpose of the tenancy is a question which must depend on the special circumstances of each case. The turning of land admittedly let out for agricultural purposes into an orchard has been treated as bringing the act of the tenant under clause (a) of Sec. 25. (24 Cal. 160).

Denial of lord's title whether a ground for ejectment—See Notes under S. 10 *ante*.

5. Devolution of occupancy right on

ble to be ejected. Can the landlord eject him on his refusal to cultivate indigo? B. L. 1917 (b), 20 (b).

Enumerate the statutory grounds for the ejectment of an occupancy raiyat. What case?

If any, can such a raiyat be ejected, when he does not violate any of the statutory conditions?

B. L. 1927 (a). What are the grounds of ejectment of an occupancy raiyat?

B. L. 1925 (a). State the grounds on which an occupancy raiyat may be ejected.

B. L. 1926 (1).

death :—If a raiyat dies intestate in respect of a right of occupancy, it shall, subject to any custom to the contrary, descend in the same manner as other immoveable property, provided that in any case in which, under the law of inheritance to which the raiyat is subject, his other property goes to the Crown, his right of occupancy shall be extinguished. (S. 26)

Heritability.—There can be no question now as to the heritability of occupancy rights. By this section an occupancy right whether transferable or not, is declared to be heritable "subject to any custom to the contrary," the *onus* of which must lie on the person alleging that it is not heritable.

Discuss whether a non-transferable occupancy holding can be the subject of a valid testamentary disposition.
B. L. 1919(b). What is the law in regard to devolution of right of occupancy?
B. L. 1918 (a). The testamentary disposition of a non-transferable occupancy holding is valid and operative so as to exclude the heir-at-law. Examine this proposition.
B. L. 1924(b). Can the heir of an occupan-

On a failure of heir, occupancy rights under this section are extinguished, in which respect they differ from tenures which in similar circumstances, escheat to the Crown. *See ante*.

Suit for rent against heirs—A suit for rent is maintainable against some of the heirs or successors in interest of a deceased tenant without bringing all the heirs or successors in interest on the record, but the decree in such a suit will not have the effect of a rent-decree under Ch. XIV of the B. T. Act (53 Cal. 197 F. B.) Where, however, one of a number of tenants is put forward by the rest as their representative in their transactions with the landlord and to represent them in the matter of the tenancy, a decree for rent obtained by the landlord against that (representative) tenant alone would be a rent-decree within the meaning of Ch. XIV of the Act. If the entire tenancy is brought to sale in execution of such a decree, all the cosharer tenants would be bound by the sale even though they are not parties to the decree. (10 W. R. 304; 15 W. R. 99; 7 C. W. N. 170; 9 C. W. N. 843; 27 Cal. 545). Now see Ss. 146-A & 146-B which have been newly added by Act IV of 1928.

Testamentary disposition.—Sec. 11 of the Act

provides that every permanent tenure shall be capable of being bequeathed in the same manner and to the same extent as other immoveable property. Prior to Act IV of 1928 there was no such provision with respect to occupancy holding nor was there any reference to the subject in any of the sections beyond the provision contained in Sec. 178, sub-sec. (3), cl. (d) that nothing in any contract made between a landlord and a tenant after the passing of this Act shall take away the right of an occupancy raiyat to transfer or bequeath his holding in accordance with local usage." It would seem, therefore, that the right of an occupancy raiyat to devise his holding by will stood in the same position as his right of transfer *inter vivos* and would be dependent on custom or local usage * In *Haridas v. Uday Chandra* (8 C. L. J. 261) it was, however, held that the heir of an occupancy raiyat in respect to a non-transferable occupancy holding was bound by a bequest of the holding made by the latter in favour of a stranger. But this case was dissented from by Mukherjee and Beachcroft J. J. in the case of *Amulya v. Tarini* (18 C. W. N. 1290) in which it was held that except under local usage, a raiyat was not competent to make a testamentary disposition of a non-transferable occupancy holding, and that the heir-at-law of the raiyat was not estopped from questioning the validity of the devise. This case was followed in *Kunjatal v. Umesh* (18 C. W. N. 1294). "An occupancy holding not being transferable except by local custom or usage, cannot also be the subject of a bequest; the legatee does not acquire

cy raiyat get khas possession against a person who has acquired by legacy the occupancy holding from the original holder ?
B.L. 1925(a). A tenant dies leaving no heirs. What would become of the tenancy (i) if it is a permanent tenure (ii) an occupancy holding ?
B. L. 1919(a). A raiyat having a non-transferable right of occupancy in a piece of land leaves it to B by a will. On A's death his legal heir C takes possession of the land. B brings a suit against C for recovery of possession.

* For *Contra*, see the recent ruling in 49 C. L. J. 122 (a case under the law as it stood before Act IV of 1928); The right to bequeath is one of the incidents of ownership and it cannot be taken away or restricted except by express enactment. The fact that S. 26 makes the occupancy right heritable and does not refer to the question of devise, does not consequently justify the inference that the Legislature did not intend to make the occupancy right heritable. But in another recent ruling (1121 C. 128) it has been held that a raiyat having a non-transferable right of occupancy has ordinarily no right to bequeath his interest.

Discuss the
respective
rights of B
& C, support-
ing your argu-
ment by
authority.

B.L. 1918(a).
In the case of
a testamentary
devise of a
non-transfer-
able raiyati
holding is the
heir at law
debarred by
the doctrine
of estoppel
from question-
ing its vali-
dity?

B.L. 1918 (b),
1920 (b).
State and
discuss short-
ly the law
laid down
in the case of
Amulya v.
Tarini,
(42 Cal. 254).
B.L. 1918(b),
1921 (b),
1922 (a).

any title and therefore the heir inherits it. The question of estoppel does not arise in such a case." (Sen's B.T. Act 216). In *Umesh v. Joynath* (22 C. W. N. 474) it was held that the testamentary disposition of a part of a non-transferable occupancy holding like that of the whole holding was invalid. The B. T. Amendment Act IV of 1928 has now made provisions for transfer as well as testamentary disposition of occupancy-holdings. See Ss. 26-B, 26-C, 26-D and 26-I *infra*.

Sub-letting—An occupancy raiyat may sublet his holding to an under-raiyat. Prior to Act IV of 1928, the provisions as to sub-letting was contained in S.85 which provided as follows :—(1) "If a raiyat sub-lets otherwise than by a registered instrument, the sub-lease shall not be valid against his landlord unless made with the landlord's consent. (2) A sub-lease by a raiyat shall not be admitted to registration, if it purports to create a term exceeding nine years. (3) Where a raiyat has, without the consent of his landlord, granted a sub-lease by a instrument registered before the commencement of the Act, the sub lease shall not be valid for more than nine years from the commencement of his Act."

S. 85 has been repealed by Act IV of 1928, the position of under-raiyats being defined in the amendments of Ss. 48 and 49. (Notes on Clauses). Under the Amending Act IV of 1928, sub-letting to an under-raiyat does not require the landlord's consent and it may be without any registered instrument. But if the sub-lease be for a term exceeding 12 years and in writing it shall not be registered, unless a landlord's fee is paid to the immediate landlord of the holding. (S. 48 H.) But though the landlord's consent is not necessary, a sub-lease created without such consent will not be a protected interest; nor will the under-raiyat get the benefit of sub-sec (4) of S. 87 if such lease be unregistered. The limit of 9 years in respect of under-raiyati lease has been removed by Act IV of 1928.

Under S. 178, sub-sec. 3. cl. (d) "nothing in any contract made between a landlord and a tenant after the passing of this Act shall take away the right of an occupancy raiyat to sub-let his land subject to, and in accordance with, the provisions of this Act."

Surrender—Occupancy-raiyats are entitled to surrender their holdings. Under S. 178, sub-sec. (3) cl. (c), "nothing in any contract made between a landlord and a tenant after the passing of this Act shall take away the right of a raiyat to surrender his holding in accordance with S. 86." S. 86 of the Act which lays down the law relating to surrender provides as follows :—

(1) A *raiya*t not bound by a lease or other agreement for a fixed period may, at the end of any agricultural year, surrender his holding.

(2) But, notwithstanding the surrender, the *raiya*t shall be liable to indemnify the landlord against any loss of the rent of the holding for the agricultural year next following the date of the surrender, unless he gives to his landlord, at least three months before he surrenders, notice of his intention to surrender.

(3) When a *raiya*t has surrendered his holding, the Court shall, in the following cases for the purposes of subsection (2), presume, until the contrary is shown, that such notice was so given, namely :—

(a) if the *raiya*t takes a new holding in the same village from the same landlord during the agricultural year next following the surrender ;

(b) if the *raiya*t ceases, at least three months before the end of the agricultural year at the end of which the surrender is made, to reside in the village in which the surrendered holding is situate.

(4) The *raiya*t may, if he thinks fit, cause the notice to be served through the Civil Court within the jurisdiction of which the holding or any portion of it is situate.

(5) When a *raiya*t has surrendered his holding the landlord may enter on the holding and either let it to another tenant or take it into cultivation himself.

(6) When a holding is subject to an incumbrance secured by a registered instrument, or when there is an under *rayat*, on the holding or part thereof, the surrender of the holding shall not be valid unless it is made with the consent of the landlord and the incumbrancer or the under *rayat*, as the case may be.

(7) Save as provided in sub-section (6), nothing in this section shall affect any arrangement by which a *rayat* and his landlord may arrange for a surrender of the whole or a part of the holding (S 86).

Abandonment—Sec 87 of the Act lays down the law relating to abandonment of a holding by a *rayat* and effect thereof. It runs as follows—

(1) If a *rayat* or under-*rayat* voluntarily abandons his residence without notice to his landlord and without arranging for payment of his rent as it falls due, and ceases to cultivate his holding either by himself or by some other person, the landlord may, at any time after the expiration of the agricultural year in which the *rayat* or under-*rayat* so abandons and ceases to cultivate, enter on the holding and let it to another tenant or take it into cultivation himself.

(2) Before a landlord enters under this section, he shall file a notice in the prescribed form in the Collector's office, stating that he has treated the holding as abandoned and is about to enter on it accordingly; and the Collector shall cause a notice to be published in the prescribed manner.

(3) When a landlord enters under this section, the *rayat* or under-*rayat* shall be entitled to institute a suit for recovery of possession of the land at any time not later than the expiration of two years, or, in the case of a non-occupancy-*rayat*, six months, from the date of the publication of the notice, and thereupon the Court may, on being satisfied that the *rayat* or under-*rayat* did not voluntarily abandon his holding, order recovery of possession on such terms, if any, with respect to compensation to persons injured and payment of arrears of rent as to the Court may seem just.

(4) Where the whole or part of a holding has been sub-let by a registered instrument, the landlord shall, before entering under this section, on the holding, offer the whole holding to the sub-lessee for the remainder of the term of the sub-lease at the rent paid by the *rayat* or under-*rayat* who has ceased to cultivate the holding and on condition of the sub-lessee paying up all arrears due from

that *raiya* or under-*raiya*. If the sub-lessee refuses or neglects within two months to accept the offer, the landlord may avoid the sub-lease and may enter on the holding and let it to another tenant or cultivate it himself as provided in sub-sections (1) and (2).

(5) if an under-*raiya* has—

- (a) a right of occupancy in a holding or portion thereof, or
- (b) been admitted in a document by the landlord to have a permanent and heritable right in his land, or
- (c) been in possession of his land for a continuous period of twelve years whether before or after or partly before and partly after the commencement of the Bengal Tenancy (Amendment) Act, 1928, or has a homestead thereon, the landlord shall before entering on the holding under this section, offer the whole holding, or part thereof, to the under-*raiya* at the rent paid by him to the *raiya* and on condition of the under-*raiya* paying up all arrears due from that *raiya* and a *salami* of five times the aforesaid rent. If the under-*raiya* refuses or neglects within two months to accept the offer, the landlord may avoid the sub-tenancy and may enter on the holding and let it to another tenant, or cultivate it himself, as provided in sub-sections (1) and (2). (S. 87).

Right to make improvements of the holding.—

Occupancy raiyats are entitled to make improvements of their holdings. Secs. 76-78 and 82-83 lay down the following rules relating to the raiyats' improvements. :—

1. (1) For the purposes of this Act, the term "improvement", used with reference to a holding, shall mean any work which adds to the value of the holding which is suitable to the holding and consistent with the purpose for which it was let, and which, if not executed on holding, is either executed directly for its benefit, or is, after execution, made directly beneficial to it.

(2) Until the contrary is shown, the following shall be presumed to be improvements within meaning of this section :—

- (a) the construction of wells, tanks, water-channels and other works for the storage, supply or distribution

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of water for the purposes of agriculture, or for drinking or for the use of men and cattle employed in agriculture ;

Explanation.—Such construction on agricultural land shall not be deemed to impair the value of the land or to render it unfit for the purposes of the tenancy.

(b) the preparation of land for irrigation ;

(c) the drainage, reclamation from rivers or other waters, or protection from floods, or from erosion or other damage by water, of land used for agricultural purposes, or wasteland which is culturable ;

(d) the reclamation, clearance, enclosure or permanent improvement of land for agricultural purposes ;

(e) the renewal or reconstruction of any of the foregoing works, or alterations therein or additions thereto ; and

(f) the erection of a dwelling-house, whether of masonry, bricks, stone or any other material whatsoever, for the tenant and his family, together with all necessary out-offices.

(3) But no work executed by the tenant of a holding shall be deemed to be an improvement for the purposes of this Act if it substantially diminishes the value of his landlord's property. (S. 76).

2.(1) Neither the tenant nor his landlord shall, as such, be entitled to prevent the other from making an improvement in respect of the holding, except on the ground that he is willing to make it himself.

(2) If both the tenant and his landlord wish to make the same improvement the tenant shall have the prior right to make it, unless it affects another holding or other holdings under the same landlord.

(3) Any fee realized from a tenant for permission to make any improvement in respect of his holding shall be deemed to be an *abwab* and the provisions of sub section (1) of S. 74 shall supply thereto (S. 77).

3. If a question arises between the *raiyat* or under-*raiyat* and his landlord—

(a) as to the right to make an improvement, or

(b) as to whether a particular work is an improvement, the Collector may, on the application of either party, decide the question and his decision shall be final. (S. 78).

4. (1) If any (landlord or) tenant of a holding desires that evidence relating to any improvement made in respect thereof be recorded, he may apply to a Revenue-officer, who shall thereupon, at a time and place of which notice shall be given to the parties, record the evidence, unless he considers that there are no reasonable grounds for making the application, or it is made to appear that the subject-matter thereof is under inquiry in a Civil Court.

(2) When any matter has been recorded under this section, the record thereof shall be admissible in evidence in every subsequent proceeding between the landlord and tenant or any persons claiming under them. (S. 81).

5. (1) Every *raiya* or under-*raiya* who is ejected from his holding shall be entitled to compensation for improvements which have been made in respect thereof in accordance with this Act by him, or by his predecessor in interest, and for which compensation has not already been paid.

(2) Whenever a Court makes a decree or order for the ejectment of a *raiya* or under-*raiya*, it shall determine the amount of compensation (if any) due under this section to the *raiya* or under-*raiya* for improvements, and shall make the decree or order of ejectment conditional on the payment of that amount to the *raiya* or under-*raiya*.

(3) No compensation under this section for an improvement shall be claimable where the *raiya* or under-*raiya* has made the improvement in pursuance of a contract or under a lease binding him, in consideration of some substantial advantage to be obtained by him, to make the improvement without compensation, and he has obtained that advantage.

(4) Improvements made by a *raiya* or under-*raiya* between the second day of March, 1883, and the commencement of this Act, shall be deemed to have been made in accordance with this Act.

(5) The Local Government may, from time to time, by notification in the official gazette, make rules requiring the Court to associate with itself, for the purpose of estimating the compensation to be awarded under this section for an improvement, such number of assessors as the Local Government thinks fit, and determining the qualification of those assessors and the mode of selecting them. (S. 82).

6. (1) In estimating the compensation to be awarded under section 82 for an improvement, regard shall be had—

(a) to the amount by which the value, or the produce of the holding, or the value of that produce, is increased by the improvement ;

- (b) to the condition of the improvement, and the probable duration of its effects ;
- (c) to the labour and capital required for the making of such an improvement ;
- (d) to any reduction or remission of rent or any other advantage given by the landlord to the *raiya*t or under-*raiya*t in consideration of the improvement ; and
- (e) in the case of a reclamation or of the conversion of unirrigated into irrigated land, to the length of time during which the *raiya*t or under-*raiya*t has had the benefit of the improvement at an unenhanced rent.

(2) When the amount of the compensation has been assessed, the court may, if the landlord and *raiya*t or under-*raiya*t agree, direct that, instead of being paid wholly in money, it shall be made wholly or partly in some other way. (S. 83).

Protected interest :—An occupancy right is a protected interest within the meaning of sec. 160 B.T. Act and cannot consequently be annulled by a purchaser of the superior tenure at a sale in execution of a decree for arrears of rent. (S. 160). It is also protected from ejectment under cl. 3 of S. 11 of the Putni Regulation (VIII of 1819) and cannot be annulled by a purchaser at a sale under the Regulation. [87 I. C. 32=A. I. R. 1925 Cal. 1169 ; S. 195 (e) B. T. Act.]

Right to share in compensation under Land Acquisition Act—An occupancy *raiya*t being a "person interested" within the meaning of the expression "person interested" in S. 3 cl. (b) of the Land Acquisition Act, is entitled to a share in the compensation allowed under the same Act. (7 Cal. 585). An agreement that an occupancy *raiya*t will not be entitled to share in the compensation for acquisition of land is valid ; such a contract is not affected by Cl. (a) of S. 178. (35 C. L. J. 133).

Transferability of occupancy holdings : Old Law
 sum up the law regarding —Prior to the Amendment Act IV of 1928 there was no

provisions in the B. T. Act as to the transferability or non-transferability of occupancy right. The question was left to be decided by custom or local usage. If the holding was transferable by custom, in that case alone a raiyat could transfer it by gift, sale or otherwise, but the onus of proving the custom or usage authorising such transfer lay upon the tenant. (23 C. W. N. 201). If the right was transferable by custom or local usage, it could not be destroyed or taken away by any contract entered into between the landlord and the tenant made after the passing of the Act.

The following is a summary of the law established by judicial decisions (under the old law) regarding the transferability of occupancy holdings apart from custom or local usage :—

(1) The transfer of the whole or a part is operative as against the raiyat, whether it is made voluntarily or involuntarily. (*Chandra Benode v. Ala Bux*, 48 Cal. 148). (2) The transfer is operative as against the landlord in all cases in which it is operative against the raiyat, provided the landlord had given his previous or subsequent consent. (3) The transfer of the whole or a part is operative as against all other persons, where it is operative against the raiyat. (*Dayamayee v. Anandamohan*, 8 C. W. N. 971.)

(4) A transfer of an occupancy holding in accordance with local custom or usage is valid even without the consent of the landlord. (23 Cal. 180).

(5) The transfer of an occupancy holding which is not transferable by local custom or usage is not a void transaction. It is voidable by the landlord but binding between the parties and their privies. (45 Cal. 434 ; 23 C. L. J. 559).

(6) The mere fact of the transfer of a part of an occupancy holding does not entitle the landlord to evict the purchaser although the sale is not binding upon him and he is not bound to recognise the purchaser as a tenant. (22 C. W. N. 965, 25 C. W. N. 717 ; 33 C. L. J. 516 ; 24 C. L. J. 113 ; 68

the transferability of an occupancy holding. B.L. '16(b), '10(b), '15(a), 1916(a), 1921 (suppl.).

A, an occupancy raiyat has sold a portion of his non-transferable occupancy holding to B. Can the landlord eject B from the portion of the holding so purchased or if the landlord has managed to secure possession of the same, can B recover it from his hands by suit ? B.L. '17 (a).

What is the position of a transferee of a non-transferable occupancy holding ? Answer the question by reference to case-law. B.L. 1928 (b). Where there is no custom or local usage allowing the

sale of an occupancy raiyat holding, what are the reasons upon which the land-

lord is entitled to eject the purchaser of a non-transferable holding ? B.L. 1925(a).

Where A, an occupancy raiyat having no transferable interest in his holding sells it to B, and quits possession in his favour can the landlord eject B ?

B. L. 16 (a), '10(a), '10(b), '14 (b).

An occupancy raiyat transfers a portion of his holding which is non-transferable by custom and the transferee is dispossessed by the landlord. Can the transferee recover possession by suit from the landlord ?

B.L. 1919(a). Is an occupancy raiyat who has transferred part of his non-transfer-

I. C. 225). The purchaser of a share of an occupancy holding is entitled to possession even as against the landlord, in as much as the tenancy has not yet terminated and interposes a barrier between him and the landlord. (20 C. W. N. 586).

(7) An occupancy raiyat who has transferred a part of his non-transferable holding is not competent to surrender to his landlord the portion so transferred either by the surrender of that portion alone or by surrender of the whole inclusive of such portion, (so as to entitle the landlord to take *khas* possession by ejecting the transferee). (48 Cal. 605, F. B.) *Contra* : 1923 Pat. 305, F. B. where it has been held that a surrender of a non-transferable holding by an occupancy raiyat to his landlord where the raiyat had previously sold a portion of the holding to another person entitles the landlord to enter upon the whole holding and eject the vendee or to settle it with another tenant.

(8) Where the transfer is a sale of the whole holding the landlord, in the absence of his consent, is ordinarily entitled to enter on the holding ; but where the transfer is of a part only of the holding or not by way of sale, the landlord though he has not consented, is not ordinarily entitled to recover possession of the holding, unless there has been (a) an abandonment within the meaning of S. 87 of the B. T. Act or (b) a relinquishment of the holding or (c) a repudiation of the tenancy. Whether there has been a relinquishment or repudiation or not depends on the substantial effect of what has been done in each case (*Dayimoyi v. Ananda mohan*).

(9) On transfer of a non-transferable holding when the original tenant takes a sub-lease under the transferee, the landlord is entitled to eject both the transferor and the transferee. (13 C. W. N. 220 ; 24 Cal. 212 ; 34 Cal. 689). *Contra* : 5 C. L. J. 295 ; 33 Cal. 531 ; 9 Cal. 648 ; 24 C. L. J. 113 ; 23 C. W. N. 135 notes ; 28 C. W. N. 300, 602 and A. I. R. 1924 Cal. 647 where it has been held that on transfer of a non-

transferable holding when the raiyat takes a sub-lease under the transferee and remains in possession, the landlord is not entitled to get *khas* possession by ejecting the original tenant, (where the relation to the landlord as such raiyat is not repudiated.) But where a tenant transfers his non-transferable holding and gives up possession of all the culturable lands of the holding but remains in possession of the homestead land only by permission of the purchaser, this is sufficient indication that the raiyat has abandoned his holding, and in such a case the landlord is entitled to eject the raiyat and the purchaser. (17 C. L. J. 303).

(10) In the absence of custom or local usage to the contrary, a raiyati holding in which the raiyat has only a right of occupancy is not saleable at the instance of a creditor of the raiyat. (24 Cal. 335; 11 C. W. N. 83; 2 Pat. L.J. 257. *Contra*: 50 Cal. 508 where it has been held that an ordinary creditor (even though he be not the landlord) can put up a non-transferable occupancy holding to sale in spite of the objections of the raiyat.) But the sole landlord of a raiyat is competent to sell in execution of a money-decree against the raiyat his occupancy holding even though the holding is not transferable by usage or custom. (*Chandra Benode v. Shaikh Ala Bux*, 48 Cal. 184).

(11) The creation of a simple mortgage by an occupancy raiyat in respect of his non-transferable occupancy holding (*without subsequent sale of his interest and abandonment*) does not entitle a landlord to recover *khas* possession, because in such a case the tenant still remains on the land. (13 C. W. N. 242). If, however, a mortgage is created in contravention of an agreement which makes him liable to ejectment, the landlord is entitled to get *khas* possession under cl. (b) of Sec. 25 of this Act. But when an occupancy raiyat mortgages his non-transferable holding and the mortgagee enforces the mortgage, has the holding sold and purchases it himself, the possession of the raiyat

transferable holding, competent to surrender to his landlord the portion so transferred, either by surrender of that portion alone or by surrender of the whole inclusive of such portion?

B.L. 1925(b). D and G held a non-transferable occupancy holding under M, the rent payable being Rs. 13 a year. The tenants sold a portion of their holding to B, M, who was not a party to this transaction sued D and G for recovery of arrears of rent. D and G surrendered to M the portion they had sold and took settlement of the remainder at an annual rent of Rs. 6. M thereafter instituted a suit to eject B, the transferee on the basis of the surrender.

Discuss the validity of the surrender.

B.L. 1921(b).

A, who is an

occupancy

raiayat under

B, sells a part

of his holding

to C and then

surrenders the

entire holding

in favour of

his landlord

B. B brings a

suit to eject

C. Discuss the

rights of the

parties.

B. L. 1924(a).

If an occu-

pancy raiyat

having no

transferable

right by

custom or

usage sells his

holding and

abandons his

possession in

favour of the

transferee,

what are the

reasons upon

which the

landlord is

entitled to

re-enter?

Can the land-

lord get any

relief if the

raiayat after

transfer re-

mains in

possession as

sub-lessee

of the trans-

feree?

C.U. 1925(b).

completely ceases and there is an abandonment of the holding by him (12 C. W. N. 499).

(12) Transfer by way of usufructuary mortgage stands on the same footing as other partial transfers. (40 Cal. 470). So, on a usufructuary mortgage of a non-transferable holding, a landlord is not entitled to *khud* possession unless there has been (a) an abandonment within the meaning of Sec. 87 B. T. Act, or (b) a relinquishment of the holding, or (c) a repudiation of the tenancy (47 I. C. 1332). The mere execution of a usufructuary mortgage is not sufficient to establish abandonment; whether there has been abandonment or not is principally a question of fact. (17 C. W. N. 802).

Present Law—The present law on the question of the transferability of occupancy holdings is contained in Ss. 26 B to 26 J. which have been newly inserted in the Act by the B. T. Amendment Act IV of 1928. The provisions of these sections (26B to 26J) apply to all transfers of holdings or portions or shares of holdings of occupancy *raiayats* and the occupancy rights therein made after the 1st day of April, 1929. (S. 26A) Ss. 26B to 26J run thus :—

1. Holdings of occupancy-raiyats with occupancy rights transferable.—The holding of an occupancy-*raiayat* or a share or a portion thereof, together with the right of occupancy therein, shall, subject to the provisions of this Act, be capable of being transferred in the same manner and to the same extent as other immovable property (S. 26 B)

2. (1) Manner of transfer and notice to landlords—(1) Every transfer shall be made by registered instrument, except in the case of a bequest or a sale in execution of a decree or a certificate signed under the Bengal Public Demands Recovery Act, 1913.

(2) A registering officer shall not register any such instrument unless the sale price or where there is no sale price, the value of each holding, portion or share thereof, is stated separately in the instrument and unless it is accompanied by—

- (a) a notice giving particulars of the transfer in the prescribed form ;
- (b) the process fee prescribed for the service of such notice on the landlord or his common agent, if any ;
- (c) a fee (hereinafter referred to as the landlord's transfer fee) of the amount provided by section 26D ; and
- (d) the prescribed cost of transmission of the landlord's transfer fee to the landlord or his common, if any.

(3) When the registration of any such instrument is complete, the registering officer shall send to the Collector the landlord's transfer fee, the prescribed cost of transmission thereof and the notice of the transfer in the prescribed form, and the Collector shall cause the landlord's transfer fee to be transmitted to, and the notice to be served on the landlord named in the notice or his common agent, if any, in the prescribed manner :

Provided that where there is no common agent, a co-sharer landlord may draw his proportionate share of landlord's transfer fee by an application to the Collector, accompanied by copies of extracts from the intermediate register maintained by the Collector under section 4 of the Land Registration Act, 1876, or copies of finally published record-of-rights under Chapter X of this Act, any other document showing the share and title of the applicant.

Provided also that when a sole landlord purchases a holding or a share or a portion thereof, no deposit of landlord's transfer fee need be made and no notice need be served. And when a co-sharer landlord purchases a holding or a share or a portion thereof and his share is specified in the instrument of transfer, he shall deposit only the amount of landlord's transfer fee proportionate to the share or shares of the remaining co-sharers.

(4) In the case of a bequest, the Court shall, before granting probate or letters of administration, require the applicant to file a notice giving particulars of the transfer

An occupancy raiyat sells his holding to B but by taking a sub-lease of a portion from B remains on the land. The holding is not transferable by custom. Can the landlord, with the help of the Court, reduce the lands or any portion thereof in his possession ? B.L. 1927 (a). Where an occupancy raiyat's holding not transferable by custom or local usage is sold by the raiyat and he quits occupation, is the landlord entitled to get khas possession by evicting the transferee ? Give reasons for your answer. B.L. 1923 (h). X has a decree for money against A, who owns a non-transferable occupancy holding.

Can X bring the holding a sale in execution of his decree?

Discuss.

B.L. 1924(a).

Is the sole landlord of a raiyat competent to sell in execution of a money decree against the raiyat, his occupancy holding unless the holding is transferable by usage or custom?

B.L. 1920(b),

1921 (a),

1922 (b),

1923 (b),

1927 (b).

A, who is an occupancy raiyat under B, sells a part of his holding to C and then surrenders the entire holding in favor of his landlord B. B brings a suit to eject C. Discuss the rights of the parties. C. U. 1929 (b)

in the prescribed form and to deposit a process fee of the prescribed amount, and the landlord's transfer fee provided by section 26D, together with the prescribed cost of transmission thereof to the landlord or his common agent, if any.

(5) When probate or letters of administration have been granted, the Court shall send to the Collector the landlord's transfer fee the prescribed cost of transmission thereof and the notice in the prescribed form, and the Collector shall cause the fee to be transmitted to, and the notice to be served on, the landlord named in the notice or his common agent, if any, in the prescribed manner.

(6) Any sum payable at the date of the transfer as an arrear of rent of the holding, or an account of a mortgage of the holding, or portion or share thereof, which the transferee has paid or agreed to pay in satisfaction of the sale price wholly or in part shall be entered in the instrument of transfer, and such sum shall, as set forth in the instrument, be deemed to be the consideration money or part thereof, as the case may be, for the purposes of sections 26D and 26F.

(7) The landlord's transfer fee and the cost of transmission payable under this section or under section 26E shall be paid to the registering officer or the Court, as the case may be, in the prescribed manner. (S 26-C).

3. Landlord's transfer fee.—The landlord's transfer fee shall amount—

- (a) in the case of the sale of a holding or a portion or share of a holding, in respect of which a produce rent is payable in whole or in part, to twenty per cent, of the consideration money as set forth in the instrument of transfer ;
- (b) in the case of a sale of the holding or a portion or share of a holding, in respect of which a money rent is payable, to twenty per cent. of the consideration money as set forth in the instrument of transfer, or to five times the annual

rent of the holding or of the portion or share transferred, whichever is greater ;

- (c) in the case of a transfer by exchange of a holding or a portion or share of a holding, to five per cent. of the value thereof as set forth in the instrument of transfer or one and a quarter times the annual rent of the holding or of the portion or share transferred to each party to the transfer whichever is greater, payable by each party ;
- (d) in the case of a transfer by gift of a holding or a portion or share of a holding to twenty per cent. of the value thereof as set forth in the instrument of transfer, or to five times the annual rent of the holding or of the portion or share transferred whichever is greater ;
- (e) in the case of a transfer by bequest of a holding or a portion or share thereof, to ten per cent. of the value thereof as determined by the Court for the purposes of stamp duty for the grant of probate or letters of administration or two and a half times the annual rent of the holding or the portion or share transferred, whichever is greater :

Provided that where only a portion or share of a holding or an occupancy *raiya*t is transferred, the rent of that portion or share shall, for the purpose of determining the landlord's transfer fee, under this section or section 26E, bear the same proportion to the rent of the entire holding as the area or share transferred bears to that of the entire holding.

Provided also that the landlord's transfer fee shall not be payable in the case of—

(i) a transfer by bequest or gift (including *keba*) in favour of the husband or wife of the testator or donor or of any relation by consanguinity within three degrees of such testator or donor ;

(ii) a *wakf* in accordance with the provisions of the Mūhammādan law which provides amongst other purposes of the maintenance of the donor himself or the

- husband or wife of the donor or any relation by consanguinity within three degrees of the donor ; or

(iii) a dedication for religious or charitable purposes without any reservation of pecuniary benefit for any individual.

Provided nevertheless that any *wakf* which includes amongst its object any provision for the maintenance of any person who is not one of the following, namely, the donor himself or the husband or wife of the donor or a relation by consanguinity within three degrees of the donor shall be liable to the payment of landlord's transfer fee as provided in this section.

Explanation 1 — The expression '*heba*' shall not include *heba-bil-ewaj* for any pecuniary consideration.

Explanation 2.—A relation by consanguinity shall, for the purposes of this section, include a son adopted under the Hindu Law. (S. 26D).

4. Procedure on sale in execution of a decree, certificate or foreclosure of mortgage—

(1) When the holding of an occupancy *raiyat* or a portion or share thereof is sold in execution of a decree or a certificate signed under the Bengal Public Demands Recovery Act, 1913, other than a decree or certificate for arrears of rent due in respect of the holding or dues recoverable as such, and neither the purchaser nor the decree-holder is the sole landlord, the Court or the Revenue Officer, as the case may be, shall before confirming the sale, require the purchaser to file a notice giving particulars of the transfer in the prescribed form and to deposit in addition to the purchase money a process fee of the prescribed amount, the landlord's transfer fee, calculated at the rate of twenty percent, of the purchase money, or five times the annual rent of the holding sold or of the portion or share thereof sold, whichever is greater, together with the prescribed cost of transmission thereof to the landlord :

Provided that where a co-sharer landlord is the purchaser, he shall deposit in addition to the prescribed process fee the amount of landlord's transfer fee propor-

tionate to the shares of the remaining co-sharers together with the prescribed cost of transmission thereof.

(2) When a mortgage of a holding of an occupancy-*raiya*t or of a portion or share thereof is foreclosed, and the decree-holder is not himself the sole landlord, the Court shall, before making a decree or order absolute for the foreclosure upon notice to the landlord or to his common agent, if any, determine the market value of the holding and require the mortgagee to file a notice giving particulars of the transfer in the prescribed amount and the landlord's transfer fee calculated at twenty per cent. of such market value, together with the prescribed cost of transmission thereof the landlord.

(3) If the purchaser fails to comply with the order of the Court or the Revenue Officer under subsection (1) within such time as may be specified in the said order, the Court or the Revenue Officer may make an order for the forfeiture of the purchase money and for the resale of the holding or portion or share thereof. If the mortgagee fails to comply with the order under subsection (2) within such time as may be specified therein, the Court may make an order for dismissal of the suit for foreclosure.

(4) When the sale has been confirmed, or the decree or order absolute for the foreclosure has been made, the Court shall send to the Collector the landlord's transfer fee the prescribed cost of transmission thereof, and the notice of the sale or final foreclosure, in the prescribed form and the Collector shall cause the fee to be transmitted to, and the notice to be served on, the landlord named in the notice or his common agent, if any, in the prescribed manner :

Provided that where there is no common agent, a co-sharer, landlord may draw his proportionate share of landlord's transfer fee by an application to the Collector, accompanied by copies of extracts from the intermediate register maintained by the Collector under section 4 of the Land Registration Act, 1876, or copies of finally published record-of-rights under Chapter X of this Act or any other document showing the share and title of the applicant (S. 26-E)

5. Power of immediate landlord to purchase.—(1) Except in the case of a transfer—

(a) to a co-sharer in the tenancy whose existing interest has accrued otherwise than by purchase,

(b) in execution of a decree or a certificate signed under the Bengal Public Demands Recovery Act, 1913, for arrears of rent due in respect of the holding or dues recoverable as such,

(c) by exchange, or

(d) referred to in the second proviso to section 26D, the immediate landlord of the holding or the transferred portion or share may, within two months of the service of notice issued under section 26C or 26E, apply to the Court that the holding or portion or share thereof shall be transferred to himself.

(2) The application shall be dismissed, unless such landlord at the time of making it, deposits in Court the amount of the consideration money or the value of the property, as the case may be, as stated in the notice served on him, together with compensation at the rate of ten per cent, of such amount.

(3) If such deposit is made, the Court shall give notice to the transferee to appear within such period as the Court may fix and state what other sums he has paid in respect of rent for the period after the date of transfer or as the landlord's transfer fee or in annulling encumbrances on the property. The Court shall then direct the applicant and any person who has joined as a co-applicant under clause (b) of sub-section (4) to deposit within such period as the Court thinks reasonable such amount as the transferee has paid on this account, together with interest at a rate not exceeding twelve and a half per cent. per annum with effect from the date on which such rent or the landlord's transfer fee has been paid or the encumbrances have been annulled.

(4) (a) When an application has been made by a co-sharer immediate landlord under sub-section (1), any of the remaining co-sharer landlords,

including the transferee, if one of them, may within the period of two months referred to in that sub-section or within one month of the application, whichever is later, apply to join in the application of the co-sharer immediate landlord aforesaid, and any co-sharer landlord who has not applied under sub-section (1) or has not applied to join under this sub-section shall not have any further power of purchase under this section.

- (a) The application to join as a co-applicant shall be granted, if within such period as the Court may fix not extending beyond the period referred to in sub-section (4) (a) the applicant deposits in Court, for payment to the co-sharer landlord who has made the application under sub-section (1), such sum as the Court shall determine as the share to be paid by him for the purposes of sub-section (2).

(5) If the deposits required under sub-section (2) or clause (b) of sub-section (4), as the case may be, and under sub-section (3) are made, the Court shall make an order allowing the application and directing that the deposits made under sub-sections (2) and (3) shall be paid to the transferee or to such other persons as the Court thinks fit.

(6) From the date of the making of the order under sub-section (5)—

(i) the right, title and interest in the holding or portion or share thereof accruing to the transferee from the transfer shall, subject to the provisions of section 22, be deemed to have vested in the immediate landlord and co-sharer immediate landlord, if any, whose application has been allowed free from all encumbrances which have been discharged or created after the date of the transfer,

(ii) the liability of the transferee for the rent due on account of the holding shall cease, and

(iii) the Court on the further application of such land-

lord or co-sharer immediate landlord may place him in possession of the property so vested in him.

(7) When a transferee is divested of his right, title and interest under the provisions of sub-section (6), he shall for the purposes of clauses (a), (c) and (d) of section 156 be deemed to be a *raiyat* ejected from his holding by proceedings for his ejectment commencing on the date on which the landlord applied to the Court under sub-section (1).

(8) Nothing in this section shall take away the right of pre-emption conferred on any person by Muhammedan law. (S. 26 F).

6. Limitation on mortgage by occupancy-raiyat.—(1) An occupancy-*raiyat* may enter into a complete usufructuary mortgage in respect of his holding or of a portion or share thereof for any period which does not and cannot, in any possible event, by any agreement, express or implied, exceed fifteen years.

(2) Notwithstanding any contract to the contrary, such mortgage may be redeemed at any time before the expiry of the said period.

(3) Every such mortgage shall be registered under the Indian Registration Act, 1908.

(4) Notwithstanding anything contained elsewhere in this Act or in any other law, no other form of usufructuary mortgage entered into by an occupancy-*raiyat* in respect of his holding or portion or share thereof shall have any force or effect, and no document creating or purporting to create—

(a) a complete usufructuary mortgage of the holding or of a portion or share of the holding of an occupancy-*raiyat* for a period exceeding or which can exceed, fifteen years, or

(b) an usufructuary mortgage of such holding, portion or share, other than a complete, usufructuary mortgage, shall be admitted to registration, nor shall any such document be received in evidence

or acted on in any Court or by any public servant. (S. 26 G.)

7. Transfer of rent-free holdings.—The fee payable by the transferee to the landlord for the transfer of a rent-free holding or of a portion or share of a rent-free holding of an occupancy-*raiya*t shall be two rupees and shall be paid in the manner provided in section 12 or section 13, as the case may be, and notice of the transfer of such holding, portion or share shall be given to the landlord in the manner set forth in sub-section (3) of section 12, section 13 or section 15 according to the circumstances of the transfer. (S. 26 H.)

8. Interpretation and Savings—(1) In sections 26C, 26D, 26F, 26H and 26J, 'transferee' includes the successors interest of the transferee.

(3) In sections 26B, 26C, 26D, 26F, 26H and 26J 'transfer' includes bequest but in sections 26C, 26D, 26F, 26H and 26J it does not include—

- (i) partition,
- (ii) lease or simple mortgage,
- (iii) usufructuary mortgage, or
- (ix) mortgage by conditional sale, until a decree or order absolute for foreclosure is made.

(3) In section 26F 'purchaser' includes the successors in interest of the purchaser and 'mortgagee' includes the successors in interest of the mortgagee.

(4) Neither the acceptance of the landlord's transfer fee provided in Sec. 26D, 26F or 26J nor the making of an application to the Court under the provisions of section 26E shall operate as an admission of the amount of rent or the area or any incident of such occupancy holding other than the existence of a right of occupancy therein, or be deemed to constitute an express consent of the landlord to the division of the holding or to the distribution of the rent payable in respect thereof. (S. 26I.)

9. Landlord's transfer-fee with compensation in certain cases of transfer—In cases where sections 26C and 26E apply—

(1) A transferee of the holding of an occupancy-*riyat* or a share or portion thereof, whose instrument of transfer or sale-certificate purports to transfer the interest of a permanent tenure-holder or of a *raiya*t holding at a rent or rate of rent fixed in perpetuity or of a rent-free holding shall, notwithstanding anything contained in the instrument of transfer, be liable to pay the landlord's fee as provided in those sections.

(2) In such payment is not made, the landlord shall be entitled to recover the balance of the landlord's transfer fee, after deducting any amount paid as the landlord's fee under section 12, 13, 17, 18 or 26H, together with such compensation as the Court thinks fit, not exceeding the amount provided in section 26D or 26E, as the case may be, as the landlord's transfer fee.

(3) The provisions of section 26F shall apply to the case of a transfer referred to in sub-section (1) and the immediate landlord shall be competent to exercise his rights of purchase under that section within two months of the date of payment into Court of the balance of the landlord's transfer fee and compensation allowed. (S. 26J.)

Note.—Secs. 26A to 26J deal with the question of the transferability of occupancy holdings and embody one of the principal changes made in the tenancy-law by the amending Act IV of 1928. The old law left the matter to local custom but as a matter of fact occupancy-rights were freely transferred without reference to and without knowledge of the landlord. In most cases, the transferee secured recognition by going to the landlord either immediately after the sale or at a later period and paying him a *selami* and arrears of rent due from the old tenant. The amount of *selami* was not fixed and in some cases the landlord was unwilling for some reason or other to accept the transferee as his tenant, and the result was litigation on which no positive law could be applied. The new law recognises the existing widespread practice of transfer and admits transferability of occupancy-holdings subject to payment of a fixed rate of *selami* (called landlord's transfer fee) at the time of the transfer. The

selami or landlord's transfer-fee has been fixed at 20 per cent of the consideration-money or five times the rent, whichever is greater. In case of rent-free holdings, the fee will be Rs. 2 as in the case of rent-free tenures. No transfer-fee will be payable in the case of a bequest in favour of natural heirs. In the case of exchange, the transfer-fee will be 5 p. c. of the value or $1\frac{1}{4}$ times the annual rent whichever is greater. This amount must be paid to the Registering Officer at the time of registration of the document together with the necessary fee for service of notice on the landlord and the prescribed cost of transmission of the money to him. The transfer fee will be sent by the Registering Officer to the Collector who will cause the notices to be served on the landlord and the money to be paid to them or to their common agent, if any. The transfer would be complete as soon as registration of the deed has been done but the landlord may within 2 months of the service of notice upon him apply to the court for purchasing the holding for himself by paying the party who had purchased from the old tenant the full amount paid by him *plus* 10 per cent as compensation. No question of post-emption arises in the case of exchange and other cases mentioned in S. 26 F. Analogous provisions with necessary modifications, have been made for cases of transfer by will and sale in execution of a decree.

C.—Enhancement of rent.—(Ss. 27-37).

1. Presumption as to fair and equitable rent.—The rent for the time being payable by an occupancy-raiyat shall be presumed to be fair and equitable until the contrary is proved (S. 27).

Note.—The benefit of the presumption is in favour of the *tenant*, the object of the enactment being to protect him against arbitrary enhancement.

2. Restriction on enhancement of money rent.—Where an occupancy raiyat pays his rent in

What are the condition on which the money rent of an occupancy raiyat may be enhanced by suit and by contract?

B.L. 1926(b).

What are the grounds of enhancement of rent of an occupancy raiyat ?
B. L. 1899 ;
'11(a), '17(a),
'18 (b).

State the grounds on which and the mode in which the rent of an occupancy raiyat can be enhanced.

B. L. 1928(b).
Subject to what limitations may the rent of an occupancy raiyat be enhanced by contract ?

B. L. 1919(b).
Is a contract to pay enhanced rent by more than 1 as, in the rupee wholly void ?

B. L. 1919(b),
1928 (b).

What are the rules relating to enhancement of rent of an occupancy holding ?

B. L. 1900,
'13(b), '14(a).
An occupancy raiyat holds

money, his rent shall not be enhanced except as provided by this Act. (S. 28)

Note.—Sec. 28 debars an enhancement of rent paid in money by an occupancy raiyat except by (i) suit or (ii) by contract, which again is subject to the limitations imposed by Secs. 29–37. These sections apply only to the case of an increase in the *rate* of rent, which is ordinarily designated “enhancement of rent.” They do not apply to the case of an increase of rent by reason of an increase in area (*rate* remaining the same) which is not “enhancement” but “alteration” of rent. (26 Cal. 233.)

Produce-rents—Produce-rents do not come within the purview of this section.

3 Enhancement of rent by contract—The money-rent of an occupancy raiyat may be enhanced by contract, subject to the following conditions :—

(a) *The contract must be in writing and registered*

Proviso (i)—But nothing in clause (a) shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than 3 years *immediately preceding the period for which the rent is claimed.*

Note—This proviso is based on the principle that oral contract, if acted up to, is quite as good as a registered document.

(b) *The rent must not be enhanced so as to exceed by more than 2 annas in the rupee the rent previously payable by the raiyat.*

Proviso (ii)—But nothing in clause (b) shall apply to a contract by which a raiyat binds himself to pay an enhanced rent in consideration of an improvement which has been or is to be effected in respect of the holding by, or at the expense of, his landlord, and to the benefit of which the raiyat is not otherwise entitled ; but an enhanced rent fixed by such a contract shall be payable only when the improvement has been effected, and except when the raiyat is chargeable with default in

respect of the improvement, only so long as the improvement exists and substantially produces its estimated effect in respect of the holding

Note.—This proviso is added to encourage improvements. Additional rent for improvements is looked upon in the light of interest on capital spent.

Proviso (iii).—When a raiyat has held his land at a specially low rate of rent in consideration of cultivating a particular crop for the convenience of the landlord, nothing in clause (b) shall prevent the raiyat from agreeing, in consideration of his being released from the obligation of cultivating that crop, to pay such rent as he may deem fair and equitable.

Contract to pay more than the maximum allowed.—A contract to pay rent enhanced by more than two annas in the rupee is *totally void*; such a contract is not divisible in character so as to justify the Court in making a decree to the extent allowable by law and reject the portion in excess. Sec. 29 does not, however, prevent an enhancement of rent by more than 2 as. in the rupee in settlement of a *bonafide* dispute and to avoid further litigation (19 C. W. N. 32; 11 C. L. J. 106; 28 Cal. 90; 18 Cal. 333; 1920 Pat. 9). But the fact that the tenant has been exonerated from certain liabilities under a previous contract cannot give validity to a stipulation to pay rent at an enhanced rate exceeding 2 as. in the rupee. (33 Cal. 607) Sec. 29 applies only where the holding remains constant. It does not apply where occupancy raiyat agrees to pay a consolidated rent for the lands of the original holding as also lands which he has encroached upon (32 C. L. J. 134). The section does not also apply to the case of a transferee of a non-transferable occupancy holding who takes a settlement at fixed rent. (69 I. C. 414) Similarly it does not apply where the status of occupancy raiyat is changed to that of a raiyat at fixed rent (1920 Pat. 144)

(c) *The rent fixed by the contract shall not be liable*

his land at a rent of Rs. 32, a year. He entitled into a contract with his landlord to pay an enhanced rent of Rs. 50 a year. The contract is not in writing but the tenant paid rent at the enhanced rate continuously for more than 3 years and then refused to pay at that rate. At what rate is the landlord entitled to recover rent? B.L. '17 (b). When by a registered contract an occupancy raiyat agrees to pay an increase of rent by more than 2 annas in the rupee, is the agreement wholly void or valid to the extent of 2 as. in the rupee? B.L. 1925(a). By a contract in writing and registered the rent of an occupancy raiya is enhanced by 4 as. in the rupee. Is the

agreement wholly void or valid to the extent of 2 as. in the rupee? B. L. 14 (a), '16 (a). his own free will agrees to an enhancement of his rent by more than 2 as. in the rupee if the rent previously payable by him is the agreement entirely void or is it valid up to 2 as in the rupee? Give reasons. B. L. 23 (c), & (b). A holds an occupancy raiyat holding under B at an annual rent of Rs. 8 (eight rupees), A out of his own free will at the request of B executes a registered agreement in favour of B enhancing the rent to Rs. 10 (ten rupees), can B enforce the agreement in its entirety or partially or not at all? B. L. 1926 (4). Give reasons 1923 (b)

to enhancement during a term of fifteen years from the date of the contract. (S 29)

Note—The rule in this clause has been introduced to give the raiyat a certain security against frequent attempt to enhance. The fifteen years' rule applies to enhancement by suit (*vide* Sec 37) is well as by contract.

Limitations on enhancement by contract—Sec 29 lays down the restrictions on enhancement of the rent of an occupancy raiyat by contract. In the first place, the contract must be in writing and registered. Secondly even when the condition of clause (a) are complied with, the enhancement must not exceed, by more than 2 annas in the rupee the rent previously payable. Thirdly, the rent fixed by contract shall not be enhanced for 15 years, i.e. if once the rent has been enhanced by contract, no further enhancement can take place for fifteen years from that date.

The provisos to the section, however control and modify the limitations imposed by the clauses (a), (b), and (c). The effect of proviso (1) is that where a contract is not proveable because it is not in writing or because it is not registered, the landlord is not debarred from recovering rent, at the rate at which rent has been paid continuously for three years or more immediately preceding the period for which the rent is claimed. But this proviso does not extend to clause (b) or (c). Accordingly no length of payment of a rent illegally enhanced (i.e. enhanced by more than 2 annas in the rupee or within 15 years of a previous enhancement) can make such illegally enhanced rent recoverable by suit. Proviso (ii) saves contracts to pay rent at the enhanced rate in consideration of an improvement to be effected by or at the expense of the landlord and to the benefit of which the raiyat is not otherwise entitled. But this proviso is qualified by the condition that the contract to pay enhanced rent in consideration of an improvement shall be operative only when the improvement has been effected and only so long as it exists.

and substantially produces its estimated effect in respect of the holding except when the raiyat is chargeable with default in respect thereof. In other words, to make the tenant liable for enhanced rent for an improvement it must appear (1) that it is respect of his holding; (2) that it has been or is to be effected by or at the expense of the landlord; (3) that the tenant was not otherwise entitled to its benefit; (4) that it must actually be carried out, and (5) that the liability should last only so long as the improvement exists, and substantially produces the estimated effect in consideration of which the enhanced rent was contracted for, provided, of course, the tenant himself has done nothing to interfere with the improvement. Proviso (iii) refers to a totally different class of cases. It sometimes happens in different parts of the country that the raiyats hold lands at specially low rates in consideration of cultivating for the convenience of the landlords a particular crop such as indigo. If the raiyat agrees to pay enhanced rent in order to be freed from that obligation, clause (b) would not affect the agreement.

[**Problems.**—(i) A tenure-holder not holding under any written lease who also owns occupancy holding orally agrees to pay an enhancement of 4 as. in the rupee for each of the properties, and continues to pay the enhanced rent for 12 years. He then defaults to pay rent and the zemindar sues him at the enhanced rate. Should the suits be decreed in full? Give your reasons. What difference would it make if the enhancement was only 2 as. in the rupee? B. L. 1913 (a). Ans (a) The enhancement of 4 as. is valid so far as the tenure is concerned (*vide* Sec. 6 *ante*). But with regard to the occupancy holding the landlord is entitled only to a decree for rent at the original rate, as the agreement to pay the enhanced rent is *wholly* void; because, proviso (1) of Sec. 29 does not control cl. (b) so that even where rent has been realised at an enhanced rate for three years or more immediately before, the landlord shall not be able to recover

If the money-rent of an occupancy raiyat be enhanced by more than 2 as. in the rupee, is the enhancement valid to the extent of 2 as. in the rupee? B.L. 15 (b). A, a landlord enhances the rent of his tenants by 4 as. in the rupee. Can he do so? Will the Court allow him an enhancement up to 2 as. in the rupee? If so, under what circumstances? B.L. 1921 (suppl.). The original rent of an occupancy raiyat was proved to be Rs. 20 per year. But the tenant paid at the rate of Rs. 30 p.a. in 1320, 1321 and 1322 B.S. Subsequently the tenant having defaulted the landlord sued for rent of 1323, 1324 and 1325 B.S. at the rate of

Rs. 30 p. 8. The defence was that rent was illegally enhanced. Can the landlord get a decree at the enhanced rate? Give reason.
 B.L. 1920(a). What is the effect if the rent of an occupancy raiyat is enhanced by agreement by more than 2 as, in the rupee? Is the position affected if the agreement is made in bona fide settlement of a dispute?
 B. L. 1920(b). On what ground can the money rent of occupancy raiyat be enhanced by suit?
 B. L. 1898, 1903, 06, 07, 13(b), 16(b). Enumerate the grounds on which the rent of an occupancy raiyat be enhanced. Can he protect himself from an enhancement suit if

at that rate if the enhancement has been by more than 2 as in the rupee as provided in cl. (b); (*Bipin v. Krishna* 9 C. W. N. 265 F. B)(2) A rent suit has been brought by a co-share landlord for his share of rent against an occupancy raiyat on the basis of a *kabuliyat* executed by the raiyat in favour of the plaintiff stipulating for the payment of money-rent due for his share at the rate of Rs. 5 and 2 maunds of rice a year. The rent payable by the raiyat before the execution of the *kabuliyat* was Rs. 4 per annum for the share of the plaintiff. The value of the rice claimed in the suit is at the rate of Rs. 3 per maund. The only dispute in the case is the validity of the *kabuliyat* the raiyat while admitting the execution of the *kabuliyat*, contends that it is void in law. How would you decide the co-share landlord's suit? B. L. 1912 (a) Ans. The *kabuliyat* is void in law under Sec. 29; because *first* it is not registered, *secondly*, the enhancement is more than 2 as in the rupee. (Moreover the payment of rice is in the nature of an *udwab*. The landlord is entitled only to a decree for rent at the original rate of Rs. 4.)]

4. Enhancement of rent by suit.—The landlord of a holding held at a money-rent by an occupancy raiyat may, (subject to the provisions of this Act), institute a suit to enhance the rent on one or more of the following:—

(a) That the rate of rent paid by the raiyat is below the prevailing rate paid by an occupancy-raiyat for land of a similar description and with similar advantages in the same or neighbouring village and that there is no sufficient reason for his holding at so low a rate.

(b) That there has been a rise in the average local prices of staple-food crops during the currency of the present rent.

(c) That the productive powers of the land held by the raiyat have been increased by an improvement

effected by, or wholly or partly at the expense of, the landlord during the currency of the present rent.

(d) That the productive powers of the land held by the raiyat have been increased by fluvial action.

Explanation—"Fluvial action" includes a change in the course of a river rendering irrigation from the river practicable when it was not previously practicable. (S. 30)

Note.—The previous section laid down the principle regulating the enhancement of rent by *contract*. The present section deals with the grounds on which the landlord of a holding held at a money-rent by an occupancy raiyat may institute a suit to enhance rent. Where enhancement of rent is once claimed under S. 30 (b) in a proceeding under S. 105 and *some years later* a suit is brought for enhancement of rent under the same sub-section, such a suit is not barred by S. 109. (33 C. W. N. 498).

Who may institute a suit for enhancement?—A suit for enhancement of rent under this section must be brought either by the sole landlord or by the general body of landlords if there are several. Such a suit cannot proceed at the instance of some only of the fractional co-sharers unless the other co-shares are made parties defendants. See p 15 *et seq.*

Prior to Act IV of 1928, a co-sharer landlord could not bring a suit for enhancement even making the other co-

the lands of his tenancy consist of a field and an undivided portion of a homestead? Give reasons for your answer.

B.L. 1927(a). Upon what grounds can the rent of an occupancy raiyat be enhanced by suit? B. L. 1922(a), 1921(b), 1921 (suppl.), 1926 (a), 1929 (b).

Enumerate some instances in which the provisions of the B. T. Act allow a party to go against the effect of a contract entered into by him as a free agent. C.U. 1929(b).

* The words "wholly or partly" have been inserted by Act IV of 1928. The necessity for the change is this explained in the *Notes on Clauses*:—"It has been considered reasonable that the landlord should be entitled to some enhancement of rent under cl. (c) of Sec. 30 when he bears a portion of the cost of an improvement." "The words are put in order to encourage landlords not to oppose schemes promoted by the District Boards under Act VI of 1920 for local drainage or irrigation works. As the law stands the landlords can get no increase of rent as a reward for contributions to which they may have been assessed by the Collector for such schemes. Hence they put obstacles in the way of these schemes being carried through." (Mr. F. A. Saahse's Speech).

shares defendants in the suit (38 Cal. 702 P. C. ; 19 C. W. N. 260 ; 17 Cal. 625 ; 25 Cal. 217). Now, under Sec. 186, a co-sharef landlord may bring a suit for enhancements under S. 30 by making the other co-sharers parties defendants in the suit and giving them an opportunity of joining in the suit as co-plaintiffs.

Notice.—Under the old law (as it stood before the B. T. Act was passed) the service of a notice on the raiyat specifying the enhanced rent and grounds on which such rent was claimed, was a condition precedent to bringing a suit for enhancement of rent. Under this Act no such notice is necessary. The institution of the enhancement suit is held to be sufficient notice under the present Act.

"Holding"—The term "holding" as used in this act now includes an undivided share of a holding. See p. 13 *ante*.

5. Rules as to enhancement on ground of prevailing rates.—Where an enhancement is claimed on the ground that the rate of rent paid is below the prevailing rate —

(a) in determining what is the prevailing rate, the Court shall have regard to the rates generally paid during a period of not less than 3 years immediately before the institution of the suit, and shall not decree an enhancement unless there is a substantial difference between the rate paid by the raiyat and the prevailing rate found by the Court ;

(b) if the Court considers that the prevailing rate cannot be satisfactorily ascertained without a local enquiry, the court may direct that a local enquiry be held order XXVI in schedule I to and S. 78 of the C. P. Code, 1908, by such Revenue officer as the Local Government may authorise in that behalf by rules made under Rule 9, Order XXVI in Sch. I to the said Code ;

(c) in determining under this section the rate payable by the raiyat, his caste shall not be taken into consideration unless it is proved that by local custom

caste is taken into account in determining the rate ; whenever it is found that by local custom any description of raiyats hold land at favourable rates of rent, the rate shall be determined according to that custom

(d) it ascertaining the prevailing rate, the amount of any enhancement authorised on account of the landlord's improvement shall not be taken into consideration ;

For instance, rates may have increased within a certain area in consequence of improvements effected by the landlord ; those exceptional rates cannot be regarded as test of the prevailing rate in the village or be allowed to influence its determination.

(e) if a favourable rate has been determined under cl. (c) for any description of raiyats, such rate may, if the court thinks fit, be left out of consideration in ascertaining the prevailing rate ;

(f) if the holding is held at a lump rental, the determination of the rent to be paid may be made by ascertaining the different classes of land comprised within the holding and applying to the area of each class the prevailing rate paid for that class within the village or neighbouring villages. (S. 31).

6. (1) What may be taken in certain districts to be the "prevailing rate."—In any district or part of a district to which this sub-section is extended by Local Government by notification in the Calcutta Gazette, whenever the prevailing rate for any class of land is to be ascertained under Sec 30, clause (a), by an examination of the rates at which lands of a similar description and with similar advantages are held within any village or villages, the highest of such rates at which, and at rates higher than which, the larger portion of those lands is held may be taken to be the prevailing rate

Illustrations.— (a) The rates at which land of a similar

description and with similar advantages is held in a village are as follows :—

Bighas				Rs. A.
100	...	...	... @	1 0
200	...	...	... "	1 8
150	...	...	... "	1 12
100	...	...	... "	2 0
150	...	...	... "	2 4

Total 700

. Then Rs. 2-4 is not the prevailing rate because only 150 bighas, or less than half, are held at that rate. Rs. 2 is not the prevailing rate, because 250 bighas, or less than half, are held at that or higher rate. Re. 1-12 is the prevailing rate, because 400 bighas, or more than half, are held either at this or a higher rate, and this is the highest rate which, and at rates at higher than which, more than half the land is held.

(d) The rates at which land of a similar description with similar advantages is held in a village are as follows :—

Bighas				Rs. As.
100	...	...	... @	1 0
250	...	...	... "	1 4
150	...	...	... "	1 8
150	...	...	... "	1 12
50	...	...	... "	2 0

Total 700

Then, for the reasons given in illustration (a) neither Rs. 2 nor Re. 1-12 is the prevailing rate, nor is Re. 1-8 the prevailing rate, because only 350 bighas (exactly half) are held at Re. 1-8 or at rates higher than Re. 1-8. In this case Re. 1-4 is the prevailing rate because more than half the lands are held at Re. 1-4 or higher rates, and this is the highest rate at which, and at rates higher which, more than half the land is held.

(2) The Local Government may, by a like notification withdraw Sub-section (1) from any district or part of a district to which it has been extended as aforesaid. (S. 31-A).

Note.—Sec. 31. A applies only to a very small part of the area to which the B. T. Act applies, so that the definition of prevailing rate laid down in the rulings of the High Court still hold good in almost the whole of Bengal and Bihar. According to the said rulings “the prevailing rate is that paid by the majority of the raiyats in the village.” (9 W. R., 83). This definition differs from that laid down in Sec. 31 in two respects :—(1) The prevailing rate is defined in Sec. 31-A not with reference to the number of raiyats paying rent, but with reference to the quantity of land for which rent is payable ; (2) that Sec. 31-A enables the highest of rates in the ascending scale of rates, at which and at rates higher than which, the major portion of land of a similar advantage in same village or in neighbouring villages is, held to be taken as the prevailing rate ; so that in time all lesser rates may be raised to this rate. (Rampini).

7 Limit to enhancement of prevailing rate—When the prevailing rate has once been determined by a Revenue-officer under chapter X or by a civil court in any suit under this Act, it shall not be liable to enhancement save on the ground and to the extent specified in S. 30, cl. (b) and S. 32. (S. 31-B).

8 Rules as to enhancement on ground of rise of prices.—Where an enhancement is claimed on the ground of a rise in prices —

(a) the Court shall compare the average prices during the decennial period immediately preceding the institution of the suit with the average prices during such other decennial period as it may appear equitable and practicable to take for comparison ;

(b) the enhanced rent shall bear to the previous rent the same proportion as the average prices during the last decennial period bear to the average prices during

the previous decennial period taken for purposes of comparison provided that in calculating this proportion, the average prices during the later period shall be reduced by one third of their excess over the average prices during the earlier period ;

(c) if in the opinion of the Court it is not practicable to take the decennial periods prescribed in cl. (a), the Court may, in its discretion, substitute any shorter periods therefor. (S. 32).

Note.—Price lists are compiled under S. 39 and they must be referred to. It is an error of law if a Court omits to refer to the price-lists. (37 Cal. 742). Though the words used in Sec. 32 are of a mandatory character, that section has to be read along with S. 35 which controls it. S. 32 only lays down the procedure by which enhancement is calculated and S. 35 gives a discretion to the Court as to the extent to which enhancement should be allowed. The facts that the cost of cultivation has increased and that landlord has succeeded in getting an enhancement recently are sufficient ground for allowing only a slight enhancement of rent under S. 35 (109 I. C. 365). In proceedings for settling fair and equitable rent, it is not enough to find that there has been an increase in the price of staple food crops but it is also necessary to find that the rent settled by the court is fair and equitable taking all circumstances into consideration. (32 C. W. N. 999).

9. (1) Rules as to enhancement on ground of landlord's improvement—Where an enhancement is claimed on the ground of a landlord's improvement—

(a) the Court shall not grant an enhancement unless the improvement has been registered in accordance with this Act ;

(b) in determining the amount of enhancement the Court shall have regard to—(i) the increase in the productive powers of the land caused or likely to be caused by the improvement, (ii) the cost of the improve-

ment, (iii) the cost of the cultivation required for utilising the improvement, and (iv) the existing rent and the ability of the land to bear a higher rent.

(2) A decree under this section shall, on the application of the tenant or his successor-in-interest, be subject to reconsideration in the event of the improvement, not producing or ceasing to produce the estimated effect. (S. 33).

Note.—The subject of "improvements" is dealt with in Secs. 76-83. The rent of an occupancy raiyat may also (under Sec. 29) be enhanced by private contract made between the landlord and the raiyat on account of an improvement made by the landlord, but the enhanced rent fixed by such contract is only payable, subject to the limitation laid down in Proviso (ii) to Sec. 29.

10. Rules as to enhancement on ground of increase in productive powers due to fluvial action.—Where an enhancement is claimed on the ground of an increase in productive powers due to fluvial action—

(a) the Court shall not take into account any increase which is merely temporary or casual; (b) the Court may enhance the rent to such an amount as it may deem fair and equitable, but not so as to give the landlord more than one-half of the value of the net increase in the produce of the land. (S. 34).

"Fluvial action"—includes a change in the course of a river rendering irrigation from the river practicable where it was not previously practicable. (Expl. to S. 30.)

11. Enhancement by suit to be fair and equitable.—Notwithstanding anything in Ss. 30 to 34, the Court shall not, in any case, decree any enhancement which is under the circumstances of the case, unfair or inequitable. (S. 35.)

12. Power to order progressive enhancement.—If the Court passing a decree for enhancement considers that the immediate enforcement of the decree to its full extent will be attended with hardship to the

raiya, it may direct that the enhancement shall take effect gradually at such times and by such instalments extending over a period not exceeding ten years as the Court may fix in this behalf. For the purposes of Section 37, however, the full rent shall be deemed to have come into force from the date of the decree.* (S. 36).

Note.—This section has been substituted for the old section by Act IV of 1928. The amendment gives courts greater power of discretion as regards progressive enhancement. It is definitely stated that for purposes of future enhancement the full rent shall be deemed to have come into force from the date of the decree.

21. Limitation of right to bring successive enhancement suits.—(1) A suit instituted for the enhancement of the rent of a holding (i) *on the ground that the rate of rent paid is below the prevailing rate, or* (ii) *on the ground of a rise in prices,* shall not be entertained, (a) if within 15 years next preceding its institution the rent of the holding has been enhanced by a contract made after the 2nd of March, 1883 (the date on which leave to introduce the Tenancy Act Bill was obtained), or (b) if a decree has been passed enhancing the rent on either of the grounds aforesaid or on any ground corresponding thereto or dismissing the suit on the merits.†

(2) Nothing in this section shall affect the provisions of Rule 1 of Order XXIII, C. P. Code. (S. 37).

D.—Reduction of rent (S. 38).

Reduction of rent—(1) An occupancy-raiyat‡ may institute a suit for the reduction of his rent on one of

* Cf. Sec. 8 *supra*.

† Cf. Sec. 9 *supra*.

‡ The words "holding at a money rent" which occurred after these words ("An occupancy raiyat") have been omitted by Act IV of 1928. The following explanation is given for the amendment:—Under the old law, the occupancy raiyats holding at produce rent had the right of applying under S.

more of the following grounds and except as hereinafter provided in the case of a diminution of the area of the holding, not otherwise, (namely) :—

(a) on the ground that the soil of the holding has *without the fault of the raiyat*, become *permanently* deteriorated by a deposit of sand or other specific cause, sudden or gradual ;

(b) on the ground that there has been a fall, not due to a temporary cause, in the average local prices of staple food-crops during the currency of the present rent, or

(c) on the ground that the landlord has refused or neglected to carry out the arrangements, in respect of the irrigation or the maintenance of embankments which were in force at the time when the rent was settled, and the soil of the holding has thereby deteriorated.

Explanation—A suit for reduction of rent properly framed for the purpose may be instituted or a plea for reduction of rent taken by any one among a number of co-sharer tenants of a holding.

(2) In any suit instituted under this section, the Court may direct such reduction of the rent as it thinks *fair and equitable*. (S. 38.)

Reduction on the ground of diminution of area.

—*Vide* Sec. 52, Sub-Sec. (1), clause (a) *post*.

40 for commutation of their produce-rent to money-rent, if they found it difficult to pay produce-rent and in such cases money-rent at a much less rate than the average price of the produce was generally found fair and equitable by the officer to whom this application was made, considering all the circumstances mentioned in the section. Now as this power of applying for commutation has been taken away by the repeal of S. 40 the raiyats paying rent in kind are deprived of any chance of reduction of their rent though their produce-rent may be very high and this would be a great hardship to them. As occupancy raiyats paying produce-rent had this right of commutation and thus getting a reduction of their rent this Sec. 38 was confined to raiyats paying money-rent only ; and there is no reason why this section should now be restricted to occupancy-raiyats paying money-rent only. As Sec. 40 is omitted, this Sec. 38 has been so worded as to include raiyats paying rent in kind also and this purpose has been served by the omission of the words "holding at a money-rent."

What are the grounds upon which an occupancy raiyat holding at a money rent may sue for reduction of his rent ?
B. L. 1900 ;
P. L. 1909.
What remedies are open to a tenant in case the soil of the holding has permanently deteriorated ? What will the tenant have to prove in the case ?
B. L. 1929(a)

Produce rent.—Prior to the amendment of 1928, there was no provision in this Act for the reduction of *rent in kind*. Under the present amended section raiyat paying rent in kind may sue for reduction of rent. See footnote at pp. 129-30 *ante*.

Restrictions on contract.—A raiyat may not contract himself out of the provisions of this section after the passing of this Act. [*Vide* Sec. 178, Sub-Sec. 3 cl. (e)].

"May institute a suit etc"—Abatement of rent may be claimed by a tenant in a suit against him for rent and a separate suit is not necessary. (51 Cal. 1022).

Sub-Sec. (1) (c) and Explanation.—These have been newly inserted by Act IV of 1928. The following explanation is given for the amendment :—It is reasonable that where a raiyat has had his rent settled when certain arrangements in respect of irrigation or maintenance of embankments were in force he should receive a reduction of his rent so long as the landlord fails to carry out his obligations in this respect. By the Explanation a number of tenants occupying a holding is given the right to institute a suit or take a plea for the reduction of rent in their several and individual capacity.

"Permanently deteriorated."—The word "permanently" should be literally interpreted and ought to be construed with reference to the existing conditions. When a piece of land gets covered with sand, the deterioration is permanent with reference to existing conditions. (20 C. W. N. 1157). A deterioration may be "permanent" although the same might be removed by application of capital and skill. (20 Cal. 579).

E—Price-lists (S. 39).

1. **Price-lists of staple food-crops.**—(1) The Collector of every district shall prepare, monthly, or at shorter intervals, periodical lists of the market-prices of

staple food-crops grown in such local areas as the Local Government may from time to time direct, and shall submit them to the Board of Revenue for approval or revision.

(2) "The Collector may, if so directed by the Local Government, prepare for any local area like price-lists relating to such past times as the Local Government thinks fit and shall submit the lists so prepared to the Board of Revenue for approval or revision.

(3) The Collector shall, one month before submitting a price-list to the Board of Revenue under this section, publish it in the prescribed manner within the local area to which it relates, and if any landlord or tenant of land within the local area, within the said period of one month, presents to him in writing any objection to the list, he shall submit the same to the Board of Revenue with the list.

(4) The price-list shall, when approved or revised by the Board of Revenue, be published in the official Gazette, and any manifest error in any such list discovered after its publication may be corrected by the Collector with the sanction of the Board of Revenue.

(5) The Local Government shall cause to be compiled, from the periodical lists prepared under this section, lists of the average prices prevailing throughout each year, and shall cause them to be published annually in the official Gazette.

(6) In any proceedings under this Chapter for an enhancement or reduction of rent on the ground of a rise or fall in prices, the Court shall refer to the list published under this section, and shall presume that the prices shewn in the lists prepared for any year subsequent to the passing of this Act are correct and may presume that the prices shown in the lists prepared for any year prior to the passing of this Act are correct, unless and until it is proved that they are incorrect.

(7) The Local Government shall make rules for determining what are to be deemed staple food-crops in any local area, and for the guidance of officers preparing price-lists under this section. (S. 39).

CHAPTER VI. —Non-occupancy raiyats. (Ss 41-47.)

This Chapter deals with the rights and liabilities of raiyats not having a right of occupancy who are referred to in this Act as non-occupancy raiyats (S 41). The provisions of this chapter are subject to those in Secs 116 and 180, Sub-sec (2). Sec. 116 provides that "Nothing in Chapter VI shall apply to lands acquired, under the Land Acquisition Act (I of 1894), for the Government or for any local authority or for a Railway Company or lands belonging to the Government within a cantonment, while such lands remained the property of the Government or of any local authority or Railway Company or lands owned by the Government or by any local authority which are used for any public work, such as a road, canal or embankment or are required for the repair or maintenance of the same, or to a proprietor's private lands (known as *khamar*, *ni*, *ni-jote*, *sirat*, *ni*, *sir* or *khamat*), where any such land is held under a lease for a term of years or under a lease from year to year" (Where, therefore, a proprietor's private lands are held otherwise than under a lease for a term of years or from year to year the provisions of this Chapter apply). Sec. 180 sub-sec (2) provides that "Chapter VI shall not apply to raiyats holding land under the custom of *utbandi* in respect of land held by them under that custom."

The Chapter is by no means exhaustive. There are other sections in the Act (e.g. Ss 66, 77, 155 etc.) which deal with matters affecting non-occupancy raiyats. Moreover, in determining the rights and liabilities of non-occupancy raiyats, the question of custom and local usage has to be considered.

1. Initial rent of non-occupancy-raiyat

—When a non-occupancy raiyat is admitted to the occupation of land, he shall become liable to pay such rent as may be agreed on between himself and his landlord at the time of his admission. (S 42).

When are the
rights
attached to a
non-occupancy
holder?
B. L.
31.

"Admitted to the occupation of land."—This refers to the initial admission, so that if the raiyat is allowed to hold on after expiry of the first term, the landlord may not compel him to pay any rent he pleases. "Where a raiyat has been in occupation of land and a lease is executed with a view to a continuance of his occupation, he is not to be deemed to be admitted to occupation by that lease notwithstanding that the lease may purport to admit him to occupation." (S. 47) *That is to say*, when a lease is executed in favour of a raiyat who is already in occupation of land, with a view to a continuance of his occupation, his tenancy shall not be deemed to begin with the lease, although the lease itself may purport to admit him to occupation. "This provision was inserted in consequence of frequent attempts on the part of landlords to evade the provisions of the law by giving to the raiyats already in occupation of land leases purporting to begin their tenancy with the lease. Under this explanation of the words "admitted to occupation" a raiyat's tenancy would date back to the time when he was first let into possession and he would not be liable to ejectment under the provisions of clause (c) of sec. 44. As a matter of practice tenants very often enter on possession of lands long before there is any question of embodying the terms and conditions of their tenancy in a lease." (Finucane).

"Such rent as may be agreed on etc."—If no rent has been agreed upon, the landlord is entitled to recover only a fair and equitable rent. (*Vide* Sec. 46, Cl. (6).

2. Enhancement of rent.—The rent of a non-occupancy raiyat shall not be enhanced except—(i) by registered agreement; or (ii) by agreement under Sec. 46: *Provided* that nothing in this section shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than 3 years immediately preceding the period for which rent is claimed. (S. 43).

In what way and how far the rent of a non-occupancy raiyat may be enhanced? B.L. 1915(b)

Note.—S. 43 involves two important principles *viz.* (1) that, although there is no express restriction respecting the enhancement of rent paid by a raiyat not possessing a right of occupancy yet, when an enhancement is made, it must be effectuated or rather evidenced by registered agreement or by an agreement tendered through the Court under the provisions of S. 46 ; but (2) that this should be no bar to the landlord recovering rent from the raiyat at the rate at which it has been actually paid for a continuous period of not less than three years preceding the period for which rent is claimed, though such rate may be higher than the rate at which the tenant was inducted upon the land. This provision gives the force of registration to a non-registered contract which has been acted up to for a continuous period of three years.

There are no restrictions on the enhancement of a non-occupancy raiyat's rent by registered instrument, as there are in the case of an occupancy raiyat's rent. (Sec. 29.) An occupancy raiyat's rent once enhanced cannot be enhanced by contract again for 15 years. (S. 29, cl. c) ; There is no such limitation on the enhancement of a non-occupancy raiyat's rent.

This section does not apply to *chur* lands. Tenants holding *chur* lands are liable, until such time as they have acquired occupancy rights therein, to pay rents at rate agreed upon between them and the landlord irrespective of the provisions of S. 43. (37 Cal. 449).

What are the grounds on which a non-occupancy raiyat may be ejected ?

S. L. 1906,
916 (b),
921 (a),
919 (b).
P. I. 1910.

3. Grounds on which non-occupancy raiyat may be ejected.—A non-occupancy raiyat shall (subject to the provisions of this Act) be liable to ejectment on one or more of the following grounds and *not otherwise*, namely—

(a) on the ground that he has failed to pay an arrear of rent ;

(b) on the ground (i) that he has used the land in a manner which renders it unfit for the purposes of the

tenancy ; or (ii) that he has broken a condition consistent with this Act and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected ;

(c) where he has been admitted to occupation of the land under a registered lease—on the ground that the term of the lease has expired ;

(d) on the ground (i) that he has refused to agree to pay a fair and equitable rent determined under Sec. 46 or (ii) that the term for which he is entitled to hold at such a rent has expired. (S. 44).

Note.—A non-occupancy raiyat cannot be ejected except on the ground specified in this section, the above four being the only grounds upon which a non-occupancy raiyat may be ejected. Hence an attempt to transfer or even a partial transfer or the denial of landlord's title are no grounds of ejectment. Parting with the possession of a holding or denying the title of the person under whom a non-occupancy raiyat holds is not a ground of forfeiture and a non-occupancy raiyat cannot be ejected for having done either. (1 C. W. N. 158).

"Subject to the provisions of this Act."—This section is subjected to the provisions of Sec. 89 which provides that a *tenant* shall not be ejected from his tenure or holding except in execution of a decree *i. e.* except by suit.

Clause (a).—This clause is subject to the provisions of Sec. 66 which enables a non occupancy raiyat to save himself from ejectment for arrears of rent by paying into Court the amount of the arrears within 30 days from the date of the decree or within such further time as the Court may allow for the purpose.

Clause (b).—This clause is subject to the provisions of Sec. 155 which requires a landlord before suing a tenant for ejectment on this ground to serve a notice on the tenant

How is such a raiyat to be ejected ?

P. L. 1910.

What classes of raiyats are liable to ejectment for non-payment of rent and what

classes are not so liable ? B.L. 1919 (a).

Non-occupancy raiyat

denies his landlord's title. Can he

be rejected ?

If not, on what grounds can he be

ejected ? B.L. 1920 (b).

specifying the particular misuse or breach of contract complained of and giving him an opportunity of remedying the same. Under sub-sec. (4) of sec. 155 a tenant against whom a decree for ejectment on this ground has been passed can always save himself from ejectment by paying the compensation fixed by the Court for the misuse or breach of contract in question.

Clause (b) declares the liability of the non-occupancy raiyat to be ejected—(1) when he has used the land in manner which renders it unfit for the purposes of the tenancy, *in other words*, the purpose for which he was inducted upon it; (*e. g.* if the land has been let out for agricultural or horticultural purposes, to turn it into a brickfield or to build houses therein, would render it unfit for the purposes of the tenancy); (2) when the tenant has broken a condition in his lease which makes him liable to ejectment upon a breach thereof. It is to be noted, however, that the tenant is not liable to ejectment for the breach of any and every condition in the contract. To subject him to that liability, the condition must be consistent with the provisions of this Act, whether made before or after passing of the Act. [Cl. Sec.^a 10 (Proviso), Sec. 18 (b) and Sec. 25 (b) *ante*.]

Clause (c)—Clause (c) provides for the ejectment of a raiyat admitted to occupation under a *registered* lease on the ground that the period for which the tenancy was created has expired. The clause is limited in its application to the case of the expiration of the initial lease (S. 47) and such a lease must be a registered one. A non-occupancy raiyat who is admitted to land without a registered lease cannot be ejected on the grounds specified in this clause. He is consequently in a better position than a non-occupancy raiyat admitted into occupation under a registered lease as regards liability to ejectment.

Clause (d)—This clause contains two grounds of eject-

ment :—(1) refusal to pay the judicial rent (Sec. 46, cl. 6) ; and (2) expiry of the judicial lease. (Sec. 46, cl. 7).

4. Conditions of ejectment on the ground of refusal to agree to an enhancement.—(1) A

suit for an ejectment on the ground of refusal to agree to an enhancement of rent shall not be instituted against a non-occupancy raiyat unless the landlord has tendered to the raiyat an agreement to pay the enhanced rent and the raiyat has, within 3 months before the institution of the suit, refused to execute the agreement.

(2) A landlord desiring to tender a draft of an agreement to a raiyat under this section may file it in the office of such Court or Officer as the Local Government appoints in this behalf for service on the raiyat. The Court or officer shall forthwith cause it to be served on the raiyat in the prescribed manner and when it has been so served, it shall, for the purposes of this section, be deemed to have been tendered.

(3) If a raiyat on whom a draft of an agreement has been served under sub-sec. (2) executes it and within one month from the date of service, files it in the Office from which it issued, it shall take effect from the commencement of the agricultural year next following.

(4) When an agreement has been executed and filed by a raiyat under sub-sec. (3), the Court or officer in whose office it is so filed shall forthwith cause a notice of its being so executed and filed to be served on the landlord in the prescribed manner.

(5) If the raiyat does not execute the agreement and file it as aforesaid, he shall be presumed to have refused to execute it.

(6) If a raiyat refuses to execute an agreement of which a draft has been tendered to him under this section and the landlord thereupon institutes a suit to eject him, the Court shall determine what rent is fair and equitable for the holding.

(7) If the raiyat agrees to pay the rent so determined, he shall be entitled to remain in occupation of

What condition must be satisfied before a landlord is entitled to institute a suit for ejectment against a non-occupancy raiyat for refusing to pay enhanced rent ? P. L. 1897.

his holding at that rent for a term of 5 years from the date of the agreement, but on the expiration of that term, shall be liable to ejectment subject to the provisions of this Act unless he has acquired a right of occupancy.

(8) If the raiyat does not agree to pay the rent so determined, the Court shall pass a decree for ejectment.

(9) In determining what rent is fair and equitable, the Court shall have regard to the rents generally paid by raiyats for land of similar description and with like advantages in the same village.

(10) A decree for ejectment passed under this section shall take effect from the end of the agricultural year in which it is passed. (S. 46).

Note.—This section does not apply where the holding was under a registered kabulyat. (17 C. W. N. cxii). The proceedings under this section are not merely proceedings for ejectment but they are also proceedings to have a fair and equitable rent assessed by the Court; if the tenant has refused to accept the agreement filed under the provisions of S. 46, it is then only that a suit for ejectment under that section can be commenced. (43 C. L. J. 45). In a suit for ejectment of a non-occupancy raiyat on the ground of his refusal to agree to an enhancement of rent, the procedure to be followed under S. 46 is as follows :—The Court will first determine what is fair and equitable rent. Whether it is necessary or advisable to serve notice on the tenants of the rent fixed and the date by which their election has to be signified is a matter of discretion in the circumstances of each case. The Court may record an order in the order sheet determining what the fair and equitable rent is. The Act does not either prohibit or enjoin the passing of a preliminary and final decree. If the tenants do not appear within the time fixed by the Court and recorded in the order determining fair and equitable rent determined by the Court,

then only the court shall pass a decree in ejectment. Such decree for ejectment shall take effect from the end of the agricultural year in which it was passed. (55 Cal. 659). Sub-sec. (9) is not exhaustive, but is merely one of the methods by which a Court acting under sub-sec. (6) is intended to arrive at the determination of the question to what is a fair and equitable rent. (27 Cal. 476).

Other incidents of non-occupancy raiyats :—

(1) **Right of sublet**—A non-occupancy raiyat is not prohibited from sub-letting and may have an under-raiyat under him and may create a protected interest under S. 160, Cl. (g), if his landlord allows him to do so. (37 Cal. 709). Sec. 44 again does not make subletting a ground for ejectment. It would thus appear that a non-occupancy raiyat has a right to sub-let his holding.

(2) **Right to transfer or bequeath**.—Non-occupancy rights may be transferable or bequeathable by custom (S. 183). But where there is no custom or usage, it would appear that a non-occupancy raiyat may not transfer or dispose of by will, his holding.

(3) **Accretion**.—When there is an accretion to the holding of a non-occupancy raiyat he is entitled to claim the benefit of Cl. (i) of Sec. 4 of Reg. XI of 1825. (13 C. W. N. 267).

(4) **Heritability**.—There is no express provision in the Act which makes the holding of a non-occupancy raiyat heritable. The question of heritability of non-occupancy rights was fully discussed in the Full Bench Case of *Midnapur Zemindary Co., Ltd. v. Hrishikesh Ghose* (41 Cal. 1108 : F. B.) in which it has been held that the holding of a non-occupancy raiyat is (apart from possible exceptions) heritable. The above Full Bench case was followed by the Patna High Court in the case of *Kalru Curki v. Jangli Chau-dhuri*, 1 Pat. L. J. 273.

Discuss whether a non-occupancy raiyat's holding is heritable. B.L. 1916(a). 1918 (b), 1924 (a), 1919(a). Is a non-occupancy raiyat's holding heritable?

Give reasons
B. L. 1923(a),
1924 (1).

I. the holding
of a non occu-
pancy riyat
hereditary?

Give reasons
B. L. 1923(b).
Discuss in the
light of the
B. L. decision
in Midnapur
Zamindari Co.
v. Hrishikesh
Ghosh (41
Cal. 1108)

whether the
right of a
non occupancy
riyat in
his holding is
hereditary.

B. L. 1921(a)
Is a non occu-
pancy riyat
hereditary?

Discuss with
reference to
case law

P. I. 1926(1)
1928(1), 1926
(1), 1928 (b).

(5) **Reduction of rent**—A non-occupancy riyat cannot apply for reduction of his rent, except on the ground of diminution of area * [Sec 52 (b)]

(6) **Improvement**—A non-occupancy riyat can construct well and erect a suitable dwelling-house for himself and his family on his land, and he can make other improvements as defined in S 76, provided they do not substantially diminish the value of his landlord's property

Difference between occupancy and non-occupancy riyat—The main differences between the position of an occupancy riyat and that of a non-occupancy riyat are the following—(1) The enhancement by contract of the rent of an occupancy riyat cannot be made oftener than once in 15 years and must not exceed 25% in the rupee except on the ground of the landlord's improvement or release from the obligation to grow a special crop. There is no such limitation on the enhancement of the rent of a non-occupancy riyat. (2) An occupancy riyat can be ejected only on the ground that he used the land of his holding in a manner which renders it unfit for the purpose of tenancy or that he has broken a condition, consistent with the Act, on breach of which he is, under his contract liable to be ejected. A non-occupancy riyat may also be ejected for failure to pay his rent. If he has been admitted to occupation under a registered lease, he may be ejected on the ground that the term of the lease has expired. And

* But see 20 Cal 579 at p. 586 where he has been held that the principle of S 38 apply to the cases of all classes of riyats. Both the present and old law (Act X of 1859) seem to recognise the undoubted right of a tenant to claim abatement of rent when he is prevented from using the land for causes beyond his control. S 38 refers to occupancy tenants only but the right to claim abatement in the circumstances mentioned in that section exists in all tenants irrespective of their status. This right is based on natural justice and equity. (1922 Pat 132 Mitter & Mukherjee v. B. T. Act, 162)

if a fair and equitable rent has been settled for him by Court he may be ejected for refusal to agree to pay such rent, or if he agrees, he may be ejected on the expiration of 5 years from the date of the agreement unless he has by that time acquired a right of occupancy. (Rampini).

CHAPTER VII—Under-raiyats. (Sec' 48-49).

This Chapter deals with the rights and liabilities of the under-raiyats or those who hold either immediately or mediately under the raiyats. This chapter has been completely amended and the new sections 48, 48A-48H and 49 have been substituted in place of the old sections 48 and 49 by the B. T. Amendment Act, IV of 1928. The changes are thus explained in the *Notes on Clauses* :—Secs. 48 and 49 have been recast as Secs. 48, 48A-48H and 49. The new S. 48G provides that all under-raiyats who have already got occupancy-rights by custom shall now have such rights by statute. It has also been made clear which of the incidents of the holding of an raiyat would apply to such an under-raiyat. Excepting as already stated, occupancy rights have not been recognised for under-raiyats but it has been definitely provided in Secs. 48C and 48E that the only grounds on which an under-raiyat may be ejected shall be (a) that he has failed to pay an arrear of rent, (b) that he has rendered the land unfit for the purposes of the tenancy, (c) that he has refused to pay the rent determined by the Court as payable by him, (d) that the term of his written lease has expired or (e) when there is no written lease, by 1 year's notice. The last two grounds (d) and (e) will not, however, apply if the under-raiyat has been in possession of the holding for 12 continuous years or has a homestead thereon or if a permanent and heritable right has been admitted by his landlord in a document. The last two grounds [*viz.* (d) and (e)] will not also apply unless the land-

lord requires the land for his homestead or for cultivation by himself. Provisions have been made for restitution of possession to the ejected under-raiyat in certain cases. (S. 48E). The initial rent of an under-raiyat has been left to agreement between the parties (S. 48). Subsequent enhancements may be made either by contract or by the Court. When by *contract* the rent may be increased upto 25 p. c. above the existing rent but not more frequently than at intervals of 15 years (S. 48 B); and when by the *Court*, the increase may be upto value of one-third (in the case of money-rent) or one-half (in the case of produce-rent), of the average produce of the preceding ten years (S. 48 D). The under-raiyat's holding will be heritable, but it will not be transferable except with the consent of the landlord (S. 48F). As regards sub-leases, when a *salami* is stipulated, a fee equal to one-fourth *salami* is to be payable to the immediate landlord of the raiyat. (S. 48H) An under-raiyat may enter into a complete usufructuary mortgage in the same manner as an occupancy raiyat. (S. 49). The intention is that S. 26 G (4) will govern under-raiyats also and forbid any other form of usufructuary mortgage.

1. Liability of under-raiyat to pay rent.—

When an under-raiyat is admitted to the occupation of land, he shall, subject to the provisions of this Act, become liable to pay such rent as may be agreed on between himself and his landlord at the time of his admission : Provided that the rent or rate of rent agreed upon shall not be less than the rent or the rate of rent payable by the raiyat to his landlord (S. 48).

Note.—The initial rent of the under-raiyat has been left to contract between the parties provided that such rent shall not be less than what is payable by the raiyat to his landlord. The Proviso has been added to safeguard the interest of the landlord. Unless this safeguard was provided a raiyat by taking a *salami* from the under-raiyat would

be allowed to let out the holding or a part of it to an under-raiyat at a lower rent and then he may abandon the holding. In such a case the superior landlord will be bound to take the rent so agreed under S. 87 of the Act, provided he pays six times the rent as *salami*. To give an example : B, a raiyat intending to abandon the holding, takes a *salami* of Rs. 200 and sub-lets the entire holding consisting of 10 Bighas to an under raiyat at a nominal rent of Re. 1. The rent of the holding was Rs. 20. Now after this subletting the raiyat abandons the land. The landlord in that case must accept Rs. 6 as *salami* (six times of Re. 1). If the raiyat had sold the holding by a Kobala, the landlord would have got Rs. 50 as *salami* and Rs. 20 as rent. The Proviso, therefore, provides that the rent should not be less than the rent payable by the raiyat.

2. Enhancement of rent of under-raiyat —

The rent of an under-raiyat shall not be enhanced except under the provisions of section 48B or section 48D. (S. 48 A).

Note.—This section as well as Ss. 48B to 48E do not apply to under-raiyats with occupancy-right. Ss. 27 to 37 apply to them. (S. 48 G).

3. Enhancement by contract.—(1) The money-rent of an under-raiyat may be enhanced by a written registered contract :

Provided that the rent shall not be enhanced so as to exceed by more than four annas in the rupee the rent previously payable by the under-raiyat, except in the following cases, namely :—

- (i) when an under-raiyat binds himself to pay an enhanced rent in consideration of an improvement which has been or is to be effected in respect of the holding wholly or partly at the cost of the raiyat and to the benefit of which the under-raiyat is not otherwise entitled, but an enhanced rent fixed by such a contract shall be payable only when the improvement has been

What is the position of an under-raiyat under the B. T. Act ? B. L.

1929 (a)

In what way and how far may the rent of an under-raiyat be enhanced ?

B. L. 1915(b), 1919 (a).

To what limit may the rent of an under-raiyat be enhanced ? If the rent of an under-raiyat is enhanced exceeding the limit as provided by the B. T. Act, is the agreement wholly

void or is
not valid up
to the extent
of the limit
provided for
by the Act?
S.T. 1914(b),
915 (a).

effected, and except when the under-*raiyat* is chargeable with default in respect of the improvement, only so long as the improvement exists and substantially produces its estimated effect in respect of the holding ;

- (ii) when an under-*raiyat* has held his land at a specially low rate of rent in consideration of cultivating a particular crop for the convenience of his landlord, and the under-*raiyat* agrees, in consideration of his being released from the obligation of cultivating that crop, to pay such rent as he may deem fair and equitable.

(2) The rent fixed by a contract under the provisions of sub-section (1), shall not be liable to enhancement during a period of fifteen years from the date of such contract. (S. 48 B).

Note.—Compare S. 29 *ante* which applies in the cases of occupancy-*rai-yats* as well as under-*rai-yats* with occupancy-right. (See S. 48-G).

The initial rent of an under-*raiyat* has been left to agreement between the parties (S. 48) and subsequent enhancements may be made either by contract between the parties or by Court. The present section deals with enhancement by contract, whereas S. 48 D deals with enhancement by suit in Court. The money-rent of an under-*raiyat* with no occupancy-right may be enhanced by a registered contract provided that it shall not exceed more than 4 as. in the rupee except for (i) improvements or (ii) where there has been specially low rates for certain considerations. Rent once enhanced cannot be enhanced within 15 years. The rent of under-*rai-yats* with occupancy right cannot be enhanced under this section (S. 48-A). Their rent is enhanceable under S. 29 *ante*. (S. 48 G).

Previous law.—Prior to the amendment of 1928, the landlord of an under-*raiyat* holding at a *money rent* could not recover rent exceeding what he himself paid by more than 50 p. c., when the under-*raiyat* held under a registered

lease or agreement, or by more than 25 p. c. in other cases. (Old S. 48) A contract for a rate of rent in excess of the maximum prescribed by S. 48 was not *wholly* void (Cf. S. 29) but nothing in excess of the maximum could be recovered. (2 C L. J. 540) S. 48 was, however, held to be controlled by S. 18 and not to apply to the case of a raiyat at fixed rate (104 I. C. 150). There was no limit of rent recoverable from under-raiyats holding at produce-rents, for Sec. 48 did not apply to rent payable in kind. (35 C. L. J. 159).

4. Ejectment of under-raiyat.—An under-*raiya*t shall, subject to the provisions of this Act, be liable to ejectment on one or more of the following grounds, and not otherwise, namely :—

Under what circumstances can an under-raiyat be ejected by his landlord ?
P. L., 1912.

- (a) on the ground that he has failed to pay an arrear of rent :

Provided that, if the under-*raiya*t is one whose rent is payable in terms of cash and not of produce and he pays through the Court all arrears up to date together with such interest and damages as the Court may award he shall not be liable to ejectment on account of such arrears ;

- (b) on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition consistent with this Act and on the breach of which he is, under the terms of the contract between himself and his landlord, liable to be ejected ;
- (c) on the ground that the term of his lease has expired, when he holds the land under a written lease ;
- (d) on the ground that the tenancy has been terminated by his landlord by one year's notice expiring at the end of the agricultural year, when he holds the land otherwise than under a written lease ; or

- (e) on the ground that he does not agree to pay the rent determined by the Court under sub-section (4) of section 48D :

Provided that an under-*raiyat* shall not be liable to ejectment on the grounds specified in clause (c) or clause (d)—

- (i) if the under-*raiyat* has—

(1) been admitted in a document by the landlord to have a permanent and heritable right to his land, or

(2) been in possession of his land for a continuous period of twelve years, whether before or after, or partly before and partly after, the commencement of the Bengal Tenancy (Amendment) Act, 1928, or has a homestead thereon,

- (ii) in the case of under-*raiyats* other than those described in clause (i) of this proviso, unless the landlord has satisfied the Court that he requires the land for his homestead or for cultivation by himself or by members of his family or by hired servants or with the aid of partners. (S. 48 C).

Note—This section does not apply to under-*raiyats* with occupancy-right. S. 25 lays down the law of ejectment of such under-*raiyats*. (Ss. 48A & 48G). Under-*raiyats* who have already got the right of occupancy by custom will acquire occupancy right now by statute and the incidents of such right have been defined, namely that these under-*raiyats* will have, as against their immediate landlords, all the rights of occupancy-*raiyats* except the new right of transferability (S. 48G). The remaining under-*raiyats* have been divided into two classes :—(1) Those who have held their land, including a homestead, for 12 years continuously. also those who have been admitted in a document by their landlords to have a permanent and heritable right ; (2) all others. Both classes will be liable to ejectment on the ground on which an occupancy-*raiyat* is liable to ejectment

and also on the following additional grounds, namely, failure to pay arrears of rent [S. 48C (1)] and refusal to pay the rent determined by the Court as payable by him [S. 48D (4).] The second class can also be ejected on the ground that their lease has expired or on 1 year's notice. This, however, can only be done if the landlord requires the land for his homestead or for cultivation by himself. If within 4 years⁸ the landlord has, instead of using the land for his homestead or cultivating it himself, sublet it, the under-raiyat will be entitled to have the land restored to him. (S. 48E).

Previous law—Prior to the amendment of 1928, an under-raiyat could not be ejected by his landlord except (a) *when holding under a written lease*—on the expiration of the term of a written lease, (b) *holding otherwise than under a written lease for a term*,—at the end of the agricultural year next following the year in which a notice to quit was served upon him by his landlord. (Old S. 49). If the under-raiyat held under a *written* lease (registered or not) he might under cl. (a) of S. 49 be ejected *without notice* on the expiration of the term of that lease. But if he held without any written lease, he would be entitled under cl. (c) of S. 49 to have at least one full year's notice before ejection. Thus, where a notice to quit was served on an under-raiyat on the 10th of April, 1908 (about the end of Chaitra, 1314 B.S.) asking the tenant to vacate within the 1st Baisak, 1315 B.S. and the suit was instituted on the 3rd of August, 1909 (Srabān, 1316 B.S.) the notice was held to be sufficient. (17 C. W. N. 932). S. 49 (b) was held also to cover the case of a written lease without a term of years (8 C. W. N. 136, 139) or for an indefinite period. (39 Cal. 278 F. B.). Thus, it was held that where a lease was granted by a raiyat to an under-raiyat for an unlimited period in contravention of S. 85* the grantee should be considered as holding otherwise than under a written lease and his tenancy was liable to be

A, a raiyat executed an under-raiyati lease in favor of a tenant for a term exceeding 9 years and had it registered. Discuss whether the lease is void

* See p. 96 ante.

is voidable at the instance of the superior landlord. Is A precluded from questioning the validity of the case?

B, L. 1919(b). A, an occupancy raiyat, takes by a registered instrument a sub-lease from a raiyat B, for a term of 3 years only, of a homestead in a different village. The term of the sub-lease expires. B needs the homestead for his own habitation, but A refuses to vacate. What advice would you give to B if he approaches you for opinion?

Give reasons, B. L. 1927(a). [See Notes under S. 182 *infra*.]

A, an occupancy raiyat grants a lease of his holding to B for 10 years. What interest does B acquire in the lands? B. L. 1929(a).

terminated in the manner provided by Sec. 49 (b). (25 C. W. N. 4).

An under-raiyati lease in contravention of sub-sec. (2) of Sec. 85 was not operative against the superior landlord of the raiyat. (19 C. W. N. 412). In 11 C. W. N. 190, it was held that a sub-lease by a raiyat for a term exceeding 9 years was invalid even against the raiyat. [But in 18 C. W. N. 618 (*see also* 29 Cal. 148) it was held that a permanent lease by a raiyat was binding between the parties to the contract.] A sub-lease by a raiyat for a longer period than nine years was wholly void, and could not be split up into two parts, a valid portion extending to a period of nine years and an invalid portion for the remainder of the term. (26 Cal. 46; 2 C. L. J. 543). But, although the lease be void under law, yet if the under-raiyat had been let into the land in perfect good faith and was also in possession as an under-raiyat, he could not be regarded as a trespasser, but must be taken to be an under-raiyat holding otherwise than under a written lease. The tenancy thus being a subsisting one, the under-raiyat could not be evicted except after service of notice as prescribed by sec. 49 of the B. T. Act. (6 C. W. N. 916; 25 C. W. N. 4 F. B.).

An under-raiyati lease for a term exceeding 9 years and erroneously registered in contravention of Sec. 85 (2) was inadmissible in evidence and oral evidence to prove the tenancy was not admissible under sec. 91 of the Indian Evidence Act. (17 C. W. N. 59; 18 C. W. N. 140 notes). But in 29 C. L. J. 473 it was *held* that although a lease for more than nine years granted by a raiyat may not be given in evidence, the tenancy can be proved *aliunde* by possession and payment of rent. Sec. 85 did not, however, apply to a raiyat at fixed rate of rent, who might grant sub-leases in the same way as permanent tenure-holders. (19 G. W. N. 1127).

Though S. 49 said that an under-raiyat could not be ejected except as provided, it must not be understood that an under-raiyat was not liable to ejectment on any other ground. For an under-raiyat could be ejected for non-payment of arrears of rent (S. 66) and S. 49 did not affect the right of the landlord (the raiyat) to institute a suit under Sec. 66 on the under-raiyat's default in payment of rent .

Where a raiyat let out a portion of the homestead land comprised in his holding for homestead purposes, the sub-lessee was an *under-raiyat* and liable to ejectment as such under S. 49 of the B. T. Act. (8 C. W. N. 454 ; 15 C. L. J. 672). In 21 C. L. J. 475, it was, however, held that the provision of the B. T. Act applicable to a *raiyat* would under S. 182 of the Act, regulate the incidents of the tenancy of the homestead though the tenant had only the interest of an under-raiyat with respect to it and the latter could not be ejected from his homestead under S. 49 cl. (b) of the Act. But in 43 C. L. J. 132 and 44 C. L. J. 311, it was held, on the contrary, that an under-raiyat holding under a registered lease of homestead, though a settled raiyat of the village could, on the expiry of his under-raiyati lease, be ejected under S. 49 of the B. T. Act. In 44 C. L. J. 311 it was held that when a particular tenancy fell within the provisions of S. 49 of the B. T. Act, S. 182 could not be invoked in determining the status of the tenant. See Notes under S. 182 *infra*.

5. Enhancement by suit.—(1) The landlord of an under-*raiyat* may, subject to the provisions of this Act, institute a suit to enhance the rent of the under-*raiyat*, and to eject the under-*raiyat*, if he refuses to pay the rent determined by the Court.

(2) The Court shall determine what rent is fair and equitable for the holding : provided that the rate of rent so determined shall not, in the case of a money rent, exceed one-third of the value of the average estimated produce of the land for the decennial period preceding the institution of the suit and in the case of a produce rent, one-half of such produce.

(3) The Court shall thereupon inquire from the under-*raiyat* if he agrees to pay the rent so determined. If the under-*raiyat* agrees, he shall be entitled to remain in occupation of his holding at that rent for a term of fifteen years from the date of the agreement.

(4) If the under-*raiyat* does not agree to pay the rent so determined, the Court shall pass a decree for ejectment.

(5) A decree for ejectment passed under this section shall take effect from the end of the agricultural year in which it is passed. (S. 48 D).

Note. This section does not apply to under-*raiyats* with occupancy-right. The provisions of S. 30 *ante* apply to such under-*raiyats* (S. 48 G). The money-rent or produce rent of under-*raiyats* with no right of occupancy may be enhanced by the Court, the limit of enhancement being, *in the case of money-rent*, one-third of the average estimated produce of the land for the decennial period preceding the institution of the suit, and *in the case of produce-rent*, one-half of such produce. When once enhanced, the rent shall not be enhanced, within 15 years.

6. Application for restitution by under-*raiyat*.—When a *raiyat* has ejected an under-*raiyat* on the grounds specified in clause (c) or (d) of 48C, the under-*raiyat* may apply to the Court by which the decree for ejectment was passed to be put in possession of the holding from which he was ejected by way of restitution if, within four years of ejectment, the landlord sublets the holding or any portion thereof; and thereupon the court may, if satisfied after inquiry that the landlord did not use the land for his homestead, or for cultivation by himself or by hired servants or by members of his family or with the aid of partners, order a recovery of possession on such terms, if any, with respect to compensation to the persons injured as to the Court may seem just. (S. 48E)

7. Incidents of holding of under-*raiyat*.—The holding of an under-*raiyat* shall descend in the same manner as other immovable property, but shall not

be transferable except with the consent of the landlord.
(S. 48F).

Note.—"The under raiyat's holding' will be heritable, but it will not be transferable except with the consent of the landlord." This section applies even to under-raiyats with occupancy right. See S. 48 G which expressly provides that Ss. 26 A to 26 J. do not apply to under-raiyats with occupancy-right. The words "Except with the consent of the landlord" are intended to provide against unnecessary transfer by the under-raiyats.

In case of surrender by the raiyat, the under-raiyat is protected and no surrender will be valid unless made with the previous consent of the under-raiyat [S. 86 (6)] See p. 98 *et. seq.* The provisions regarding surrender in S. 86 have been made applicable to under-raiyats with occupancy-right (S. 48 G) They have not, however, been extended to other under-raiyats.

* Surrender.

All under-raiyats have now the right to abandon their holdings under the same conditions and with the same safeguards as in the case of raiyats (S. 87) The two superior classes of under-raiyats [namely (1) under-raiyats with occupancy-right and (2) under-raiyats who have been admitted in a document by their landlord to have a permanent and heritable right or have held their land for 12 years continuously or have a homestead thereon] have also the right to claim recognition, when their immediate landlord abandons his holding, on payment of a *salami* [S. 87 (5)] See p. 99 *et. seq.*

Abandonment.

Previous law on heritability and transferability of under-raiyati holding—(A) Heritability—The rights of an under-raiyat under an annual holding are not heritable (8 C. W. N. 481 ; 31 Cal. 759 F. B ; 19 C. W. N. 1129). The only rights which the heirs of an under-raiyat have, irrespective of custom or local usage, is to remain in posse-

* the interest of an under-raiyat heritable ? B. L. 1916 (b). Discuss whether the

heir of an under-raiyat under an annual holding is entitled to remain in possession till the end of the agricultural year, B. L. 1921(a).

ssion of the land until the end of the then agricultural year for the purpose (if the land has been sublet) of realising the rent which might accrue during the year, or (if not sublet) for the purpose of tending and gathering the crops. (8 C. W. N. 479 F. B ; 11 C. W. N. 519) But where a sub-lease is granted by a raiyat for a term of years not exceeding nine years, and the under-raiyat dies before the expiry of the term, his heirs are entitled to succeed him. (20 C.W. N.750). An ordinary holding of an under-raiyat from year to year is not in itself heritable, but a leasehold interest under the B. T. Act or under any other Act, if it is for a term of years, is necessarily heritable and where an under-raiyati holding was created for 9 years, the death of the under raiyat can make no difference in the contract under Sec. 37 of the Contract Act ; it cannot therefore be said that under no circumstances, can an under-raiyati holding be heritable. (20 C. L. J. 328). (B) *Transferability*—An under-raiyati holding is *prima facie* not transferable. (20 C. L. J. 548, 32 C. L. J. 46 ; 18 C. L. J. 262).

Sub-letting.—Sec 4 (3) describes an under-raiyat to be a tenant holding immediately or *mediately* under a raiyat. This presumes in the under-raiyat a right to sub-let. But an under-raiyat has nowhere in the Act been expressly authorised to grant any sublease. '

Discuss if occupancy right can be acquired by an under-raiyat ? B.L. 1916(b).

8 Occupancy right of under-raiyat.—(1) Every under-raiyat who immediately before the commencement of the Bengal Tenancy (Amendment) Act, 1928, had by custom a right of occupancy in any land, shall have a right of occupancy in that land.

(2) Every under-raiyat who has a right of occupancy in his holding shall have, as regards his immediate landlord, all the rights and liabilities of a raiyat with a right of occupancy, as set forth, in—

(i) Chapter V other than those conferred or imposed by sections 20, 21, 22, 26A to 26 J.

- (ii) Sections 65, 86, 116 and 178, so far as possible, and
- (iii) Chapter XIV,
and his holding, as against such landlord, shall be deemed to be the holding of an occupancy-*raiyyat* for the purposes of the said sections or chapters.
- (3) The interest of an under-*raiyyat* who has a right of occupancy in his holding shall not be deemed to be a protected interest under clause (d) of section 160.
- (4) The provisions of sections 48A to 48E shall not apply to an under-*raiyyat* who has a right of occupancy in his holding, in so far as such provisions are inconsistent with this section. (S. 48G).

Note.—This section provides that all under-*raiyyats* who have already got occupancy right by custom shall now have such right by statute. They will also have as against their immediate landlords all the rights and liabilities of occupancy *raiyyats* as set forth in Chapter V (except those conferred or imposed by Ss. 20 to 22 and 26A to 26J), Ss. 65, 86, 116 and 178 and Ch. XIV. Thus in respect of the following matters, namely, rights in respect of the use of the land (S. 23), rights in trees (S. 23A), obligation to pay fair and equitable rent (S. 24), protection from eviction except on specified grounds (S. 25), devolution of the occupancy-right on death (S. 26), enhancement of rent (Ss. 27—37), reduction of rent (S. 38), protection from ejectment for arrears of rent (S. 65), surrender (S. 86), inability to acquire right of occupancy in the proprietor's private land (S. 116), right to deposit the landlord's rent to prevent or set aside a sale of the Court for the latter's arrear (Ch. XIV), and restrictions on exclusion of Act by agreement (S. 178), the incidents of such under-*raiyyats* will be the same as those of the occupancy *raiyyats*. But they

will not acquire the status of settled raiyats by continuous holding of land in any village for 12 years (S. 20) or acquire occupancy rights in lands as settled raiyats do (S. 21); and their holdings will not be regarded as occupancy holdings nor will they be regarded as occupancy-raiyats for the purpose of S. 22. Further, their interest will not be "protected interest" within the meaning of S. 160 (d).

Previous law on acquisition of occupancy right by under-raiyat—Under Act X of 1859, under-raiyats could not acquire right of occupancy. (6 W. R. 168) Under the B. T. Act prior to the amendment of 1928, under-raiyats might acquire occupancy right by custom or usage. (46 Cal. 43; 6 C. W. N. 310; 19 C. W. N. 246). This customary right has been made statutory by the B. T. Amendment Act, IV of 1928.

9. Provision as to salami.—(1) No lease to an under-raiyat for a term exceeding 12 years shall be registered unless a landlord's fee equal to twenty per cent. of the value of the leasehold created or five times the annual rent of the lessor whichever is greater together with the prescribed cost of transmission, a notice giving particulars of the lease in the prescribed form and the prescribed process fee for the service of such notice on the landlord or his common agent, if any, is paid to the Registering Officer.

Explanation—(1) When the lease comprises a portion or a share of the lessor's holding the rent of that portion or share shall for the purpose of determining the landlord's fee under this sub-section bear the same proportion to the rent of the entire holding as the area or share sublet bears to that of the entire holding.

Explanation 2.—A lease may include either a *patta* executed by the lessor or a *kabuliyat* executed by the lessee, but where the landlord's fee has been paid for the *patta* it shall not be again payable for the *kabuliyat* and *vice versa*.

(2) The manner of transmission of the landlord's

fee to the immediate landlord shall so far as possible be that provided in section 26C.

- (3) The acceptance by the landlord of the landlord's fee provided in sub-section (1) shall not operate as an admission of the amount of rent or the area or any incident of the *raiyat's* or under *raiyat's* holding, or be deemed to constitute an express consent of the landlord to the division of the holding or to the distribution of the rent payable in respect thereof. (S. 48 H).

10. Mortgage by under-raiyat —(1) Notwithstanding anything contained in section 48F, an under-*raiyat* may enter into a complete usufructuary mortgage in the same manner and on the same conditions as are provided in section 26G for occupancy-*raiyats* and the provisions of that section shall apply, so far as may be, to under-*raiyats* as if they were occupancy *raiyats*.

(2) Such mortgage shall not be binding upon the landlord of the under-*raiyats*. (S. 49)

CHAPTER VIII.—General provisions as to rent (Ss. 50—75).

The *special* incidents of the five different classes of tenancies have been dealt with in the last five Chapters. The *general* incidents that are common to all the classes or to some of them are now treated in this Chapter. This Chapter embodies a variety of miscellaneous rules relating to the character, amount and payment of rent, which in some respects, have little or no relation to each other.

A—Rules and presumptions as to amount of rent (Ss. 50—51).

1. (1) Rules and presumption as to fixity of rent.—When a *tenure-holder* or *raiyat* and his predecessors-in-interest have held * at a rent or rate of

What are the rules as to presumption of fixity of rent under the Bengal Tenancy Act? B. L. 1925(b).

* In construing this section the words "a tenure or holding" or "land constituting a tenure or holding" should be supplied after the word "held" in subsections (1) & (2). (22 C. W. N. 904 per Richardson J).

A landlord brings two suits for enhancement of rent. Defendant proves uniform payment of rent since 1780 in one case and since 1800 in the other. The landlord proves that the land in the second case was the bed of a river before 1800. Are the rents enhanceable? Give reasons. B. L. 1903. [Under Sec. 50 (1) rents proved to have been paid uniformly from the Permanent Settlement of 1793 are not enhanceable. So, there can be no enhancement in the first case. In the second case, the land is not proved to have been held from the Permanent Settlement; and although the tenant has proved uniform payment of rent for more than

rent which has not been changed from the time of the Permanent Settlement, the rent or rate of rent shall not be liable to be increased except on the ground of an alteration in the area of the tenure or holding

(2) **Presumption as to fixity of rent in case of lands held at fixed rate for 20 years**—If it is proved in any suit or other proceeding *under this Act*, that either a tenure holder or raiyat and his predecessors in-interest have held at a rent or rate of rent which has not been changed during the 20 years immediately before the institution of the suit or proceeding it shall be presumed until the contrary is shown, that they have held at that rent or rate of rent from the time of the Permanent Settlement. Provided that if it is required by, or under, any enactment, that in any local area tenancies at fixed rents or rates of rent shall be registered as such on or before a specified date, the foregoing presumption shall not, after that date, apply to any tenancy or as the case may be, to any tenancy of that class in that local area unless the tenancy has been so registered

(3) The operation of this section, *so far as it relates to land held by a raiyat*, shall not be affected by the fact of the land having been separated from other land which formed with it a single holding or amalgamated with other land into one holding

(4) Nothing in this section shall apply to a tenure held for a term of years or determinable at the will of the landlord. (S. 50)

Note.—The "Permanent Settlement" referred to in this section means the Permanent Settlement of 1793. The provisions of the section apply to all the Provinces to which the Act applies and not merely to those in which the Permanent Settlement was made; they also apply to lands in those places in which the Settlement was effected prior or subsequent to the Permanent Settlement of 1793 (16 W. R. 289; 27 C. W. N. 647). Thus where an estate was permanently settled in 1905, the tenant, to entitle him to claim the presumption under S. 50, must show that he has been holding from 1793. (27 C. W. N. 647).

This section affords immunity to tenure-holders or raiyats who have held at a fixed rent or rate of rent from the time of the Permanent Settlement and makes no provisions for those who have held since the Permanent Settlement. The fact that a *jama* was created after the Permanent Settlement does not, however, deprive the tenant to establish by evidence that there was a contract that the rent should not be enhanced. (29 C. W. N. 723).

S. 50 (1) applies whatever be the contract between the parties if the rent has not, as a matter of fact, been changed from the time of the Permanent Settlement. (32 C. W. N. 105 ; 22 C. W. N. 904)

20 years, the presumption under Sec. 50 (2) does not apply, for the landlord having proved that the land was under water before 1800, the presumption has been rebutted. So the rent may be enhanced in the second case. 1

Where a tenant claims exemption from enhancement of rent under this section, the *onus* lies on him to prove the uniformity of rent as required by this section. (4 C. L. J. 37).

For the purposes of this section, it is immaterial whether there is one tenancy or a series of tenancies or whether the holding is under one landlord or different landlords ; it is sufficient that the rent or the rate of rent has been the same from the time of the Permanent Settlement. (97 I. C. 546). It is also immaterial how the tenant came to have acquired the land. This section entitles the holder of the land for the time being, however he may acquire it, to the benefit of this section, if he can show that there has been a continuous uniform payment of the same rent. (9 Cal. 252).

There is nothing in the nature of a *ghatwali* tenure to show that as long as such a tenure exists, the presumption under S. 50 can not, by reason of S. 181 of the Act, arise. Thus, a raiyat under a *ghatwali* tenure is protected notwithstanding S. 181, if he proves what is required by S. 50 (1) and in order to prove it he may avail of the presumption in S. 50 (2) which merely embodies a rule of evidence. (2 C. L. J. 379).

The object of the Legislature in providing for the presump-

tion as to fixity of rent mentioned in this section was to provide in suits or proceedings under the Act *i.e.* in suits or proceedings between landlords and tenants as such, an easy method of determination of the rights of the parties. (13 C. L. J. 415, 417). The presumption although it might, in one sense be considered a rule of evidence, is, to the tenants of this province, a cherished right granted to them so long ago as 1859 in consideration, it may be, of his general ignorance and incapacity to cope with the superior intelligence and ways and means of the landlord. (37 Cal. 30, 39 F. B.)

The presumption under this section arises only in a suit or proceeding under this Act. It has no application in suits which are not under this Act. Thus it has been held that the presumption under this section is inapplicable to a suit for damages under S. C. C. Act (5 C.L.J. 413), a suit under the Land Acquisition Act (7 C. W. N. 810) and a suit under the general law for ejectment of an alleged trespasser (7 C.W.N. 132). It has, however, been held that even in cases to which the presumption under sec. 50 is not directly applicable, the court may act on a presumption similar to the one arising under this section, if the facts justify the necessary inference (37 C.L.J. 52 ; 15 C. W. N. 752 ; 36 Cal. 763 ; 94 I. C. 310).

The presumption under S. 50 does not apply where a Record-of-Rights has been finally prepared (S. 115 B.T. Act ; 49 Cal. 919), or where the origin of the tenancy is known (70 I. C. 207 ; 40 C. L. J. 235). But it applies when there is no allegation or proof that a tenancy commenced in a particular year (5 C. W. N. 60) Where a tenant holds over after the expiration of the term of the tenancy, it is a new tenancy coming into operation after the date of the expiration of the term of the previous tenancy and the presumption is rebutted as the origin of the tenancy is known. (65 I. C. 589).

Where a landlord purchases a holding at a rent-sale and resettles the land with the same tenant, the continuity of the old tenancy is broken and the presumption under this section does not apply. (106 I. C. 136). A new tenancy is created when a tenant sells or transfer a non-transferable holding and the landlord recognises the transferee and the presumption under this section does not apply. (106 I. C. 136 ; Sen's B. T. Act, 388 ; 39 Cal. 663 ; 30 C. W. N. 765 ; A. I. R. 1924 Cal. 544. *Contra* : 22 C. W. N. 904 where it has been held that the purchaser of a non-transferable holding who has obtained recognition from the landlord is admitted, in the absence of special circumstances, into the original tenancy with all its incidents.) Where the purchaser of a non-transferable occupancy holding was recognised as a tenant of a previous jama upon his executing a Kabuliyat in which shares separately purchased were amalgamated and there was a stipulation of enhancement of rent at specified rates for different classes of land upon measurement in future, it was held that in the circumstances of the case a new tenancy was created by the Kabuliyat as the landlord recognised the purchaser as a tenant only upon the additional term and it being a new tenancy, the tenant was not entitled to the benefit of the presumption under S. 50 (2) (30 C. W. N. 765).

The presumption under this section applies whether the rent is payable in kind or partly payable in money or in kind. (37 C. L. J. 52 ; 36 C. L. J. 220).

A sub-division of a tenure does not affect the continuity of a tenure or render inapplicable the provisions of S. 50 of the B. T. Act. (36 C. L. J. 389). It is well settled that continuity of a transferable tenure is not affected by sub-division or by consolidation (20 C. W. N. 1002 : 3 W. R., Act X, 135 ; 5 W. R., Act X, 53.) In 36 C. L. J. 382 it has been held that the sub-division of a tenure does not operate as a breach of the continuity of the tenure ; if each fragment

A, Tenure is divided and the different parts into which the tenure is divided are held at a proportionate rent the

aggregate rent being equal to the original rent. Is the tenure-holder entitled to the benefit of the presumption under sec. 50 cl. (2) of the Bengal Tenancy Act? B.L. 1925(b). B, an occupancy raiyat holds a holding under A. A brings a suit for enhancement of rent on the ground of a rise in the prices of staple food-crops. B shows from the dakhilas that he has been paying rent at the rate of Rs. 50 per annum for 20 years immediately before the institution of the suit. A shows that 50 years before suit, the holding was created by amalgamation of two holdings paying rent at the rate of Rs. 25 and Rs. 24-8 per annum and

is held at a proportionate rent and the aggregate rent equals the original rent the tenure holder is entitled to the benefit of the presumption formulated by S. 50 (2) of the B. T. Act. The maxim *expressio unius est exclusio alterius* has no application in such a case. The operation of Sub-Secs. (1) and (2) of S. 50, B. T. Act is not excluded by reason of sub-division or amalgamation of tenures. [13 C. W. N. 410, dissented from. In that case a tenure held at a fixed rent of Rs. 4-8 as. had been existing for a period of 150 years before 1884. In 1884, the tenure was split up into two tenancies, each bearing a rent of Rs. 2-4 as. Held that the presumption under S. 50. cl. (2) B. T. Act does not arise in such a case, and the tenant cannot have his name entered in the record of rights as holding at a fixed rent.] Sub-Sec. (1) of S. 50 B. T. Act contains the substantive rule on the subject of protection from enhancement, while sub-sec. (2) deals merely with the mode of proof. Sub-sec. (3) is enacted solely with a view to secure the position of *raiya*s and not with a view to injure the position of tenure holders. In 17 C. L. J. 435 which was a case in respect of a *raiya*ti holding, it has been held that a raiyat in order to bring himself within S. 50 is only concerned to show that the particular land which is the subject of suit has been held at an unchanged rent since the Permanent Settlement and it is not important that the land should throughout that period have remained a separate holding. See also 10 W. R. 429 and 20 W. R. 419. But once it is shown that after the Permanent Settlement the constituent parts of a tenure were not held at an uniform rent, no presumption can arise as to the tenure having been held at an uniform rent from the time of the Permanent Settlement. (23 C. W. N. 201, 216) In 11 C. L. J. 56 it has been held that where lands of a tenancy have been sub-divided, if a question arises whether new tenancies have been created, the answer must depend upon the intention of the parties; no inflexible rule apart from intention can be laid down. The mere fact of the amalgama-

tion of several holdings into one would not change the respective incidents of the holdings in the absence of a contract to the effect that it was intended to change those incidents. (55 Cal. 355) Where, however, new parcels of land are added to the original holding and the rent is increased after the Permanent Settlement, the incidents of the original holding are changed and a new tenancy is created, and consequently there is no room for the presumption under S. 50 (3). (101 I. C. 317) Similarly, where several separate tenures were amalgamated by a Kabuliyat and the tenant expressly stipulated to pay an enhanced rent, a new tenancy was created and the presumption arising under S. 50 (2) was rebutted. (22 C. W. N. 321) A document which merely recognises a previously existing interest and does not show that a new tenancy was created or that there has been a change of rent since the Permanent Settlement does not rebut the presumption. (18 C. W. N. 949; 28 C. W. N. 752, P. C.) A Kabuliyat by which the tenant expressly stipulates to pay an enhanced rent according to the *Pergunah* rate rebuts the presumption. (22 C. W. N. 322) But Sec 30 C. W. N. 1038 where it has been held that an agreement to pay enhanced rent at some *future* time does not constitute a change in the rate of rent and by itself does not rebut the presumption under S. 50 (2). Where the kabuliyat provides that if the lands are measured and the tenant is found to be in possession of more land than what he is paying rent for, he will pay rent *for the excess land* at the higher rate paid by the neighbouring tenants, the kabuliyat does not alter, nor does it purpose to alter, the rent or rate of rent within the meaning of S. 50 (A. I. R. 1927 Cal. 75)

the rent was then fixed at Rs. 50. How would you decide the suit? Give reasons for your decision. B.L. 1929(a).

The mere fact of payment of rent at an uniform rate for any number of years, apart from the presumption that can be raised under S. 50, does not raise any presumption of fixity of rent. (65 I. C. 527; 51 Cal. 454) To hold otherwise would be to require every landlord to enhance the rent

of every tenant under him at certain intervals of time which he might not himself desire to do. (51 Cal. 454)

To rebut the presumption arising under S. 50 (2) the variation in the rent need not be a substantial one. (28 C. W. N. 207 notes ; 44 C. L. J. 103) *Contra* : 41 C. L. J. 135, 36 C. L. J. 389, 1 W. R. 230, 4 W. R. 33, 7 W. R. 282. A change of money-rent into rent is kind or an addition of an illegal cess or forced submission of a tenant to payment of an extra amount does not amount to a variation of rent. (12 W. R. 14 ; 4 W. R. Act X, 93 ; 5 W. R. Act X, 32)

The presumption is rebutted by the tenant relying upon a *puttah* granted after the Permanent Settlement. (1 Hay. 232 ; W. R. 1864, Act X, 36, 109).

Strictest prove of the uniformity of rent is necessary. But it is not necessary to prove payment of rent for 20 years (1 W. R. 45) *consecutively*. (39 C. L. J. 437). It is sufficient if the whole space of the time is included between limits upon which the evidence bears, provided the evidence is such as to lead to the belief that the rent was uniform throughout the intervening period. (8 W. R. 284 ; 27 C. W. N. 740)

2. Presumption as to amount of rent and conditions of holding.*—If a question arises as to the amount of a tenant's rent or the conditions under which he holds in any agricultural year, he *shall be presumed, until the contrary is shown*, to hold at the same rent and under the conditions as in the preceding agriculture year. (S. 51).

Note.—The presumption contained in this section is one to the effect that the tenant who holds over after the expiration of the lease does so on the terms of the lease, at the same rent and on the same stipulations as are mentioned in the lease until the party come to a fresh settlement. (2

* The word "holding" here includes all classes of tenancies and is not used in the restricted sense as defined in S. 2 (5).

C. W.N. 303). The expression "holding over" means that the relation of landlord and tenant continued with the assent of both parties, and the overt acts by which the relation might be continued are either the receipt of rent by the landlord or his assenting to the continuance of the tenancy by other acts or words. (34 Cal. 395) A tenant holding over is not a trespasser and cannot be ejected except by a reasonable notice to quit or some other legal means. (8 C. L. J. 533; 13 C. W. N. CLXXX).

B. — Alteration of rent on alteration of area
(S. 52).—(1) Every *tenant* shall—

(a) be liable to pay additional rent for all land proved by measurement to be in excess of the area for which rent has been previously paid by him, *unless* it is proved that the excess is due to the addition to the tenure or holding, of land which having previously belonged to the tenure or holding was lost by diluvion or otherwise, *without any reduction of the rent being made*: and

(b) be entitled to a reduction of rent in respect of any deficiency proved by measurement to exist in the area of his tenure or holding as compared with the area for which rent has been previously paid by him, *unless* it is proved that the deficiency is due to the loss of land which was added to the area of the tenure or holding by alluvion or otherwise, and that an addition has not been made to the rent in respect of the addition to the area.

Principle.—The object of the section is to provide principles to regulate the alteration of rent on alteration of area as regards *all* classes of tenancies alike. The principle is that, if a tenant is let into occupation of certain quantity of land for a certain lump rent or at a certain rate of rent and if he afterwards, acquires more land over and above what was originally let, the tenant is liable to pay additional rent for the excess area, while a tenant is entitled to a reduction of rent in the contrary case.

(2) *In determining the area for which rent has*

been previously paid, the Court shall, if so required by any party to the suit, have regard to—

(a) the origin and conditions of the tenancy, for instance, whether the rent was a consolidated rent for the entire tenure or holding ;

(b) whether the tenant has been allowed to hold additional land, in consideration of an addition to hold his total rent or otherwise with the knowledge and consent of the landlord ;

(c) the length of time during which the tenancy has lasted without dispute as to rent or area ; and

(d) the length of the measure used or in local use at the time of the origin of the tenancy as compared with that used or in local use at the time of the institution of the suit.

Note.—This sub-section enumerates the considerations which should guide the Court in cases where there may be a dispute as to the area for which the tenant has been paying rent. The following illustrations were given in the Draft Bill :—(i) A, a raiyat holds his land *at one rupee per bigha* and has been paying an annual rent of Rs. 17 for 17 bighas. A measurement shows that he holds 23 bighas, and the whole of this land is of the same quality. His rent can be increased to Rs. 23. (ii) A, a raiyat has a holding usually described in the *jama-wasil-baki* papers and the raiyat's receipts as comprising 27 bighas and the rent paid for which is Rs. 33-12. *No measurement of this holding has at any time been made* and there is no allegation that its area has been diminished by diluvion ; but 15 bighas of land clearly distinguishable are shown by measurement to have been added to the holding by alluvion. A is liable to pay additional rent for the 15 bighas. (iii) A was let into possession of a holding in 1860 under a written lease which describes the holding as comprising 37 bighas of land and *gives the boundaries*. The land is situated in a cultivated village and the boundaries are *ascertainable and definite*. In 1880, the

land within those boundaries is measured and found to be 45 bighas. A is not liable to pay additional rent in respect of the 8 additional bighas found to be within the boundaries stated in his lease. (iv) A was let into possession of a holding in 1850 under a written lease which describes the holding as comprising 50 bighas, more or less and *gives the boundaries*. The land is situated in a village which in 1850, consisted chiefly of uncleared jungle and the boundaries are *inexact and indefinite*. In 1880 A is found to be in possession of 200 bighas of cultivated land to which the description by boundaries is applicable. A is liable to pay additional rent

(3) *In determining the amount to be added to the rent*, the Court shall have regard to the rates payable by tenants of the same class for lands of a similar description and with similar advantages, in the vicinity ; and *in the case of a tenure-holder*, to the profits to which he is entitled in respect of the rent of his tenure and shall not in any case fix any rent, which under the circumstances of the case is unfair or inequitable.

(4) The amount abated from the rent shall bear the same proportion to the rent previously payable as the diminution of the total yearly value of the tenure or holding bears to the previous total yearly value thereof, or, in default of satisfactory proof of the yearly value of the land lost, shall bear to the rent previously payable same proportion as the diminution of area bears to the previous area of the tenure or holding.

(5) When, in a suit under this section, the landlord or tenant is unable to indicate any particular land as held in excess the rent to be added on account of the excess area may be calculated at the average rate of rent paid on all the lands of the holding exclusive of such excess area.

(6) When in a suit under this section the landlord or tenant proves that—

(i) at or about the time when the area was recorded in any *patta* or *kabuliyat* there existed in respect of the estate or permanent tenure or

part thereof in which the tenure or holding is situated a practice of settlement being made after measurement of the land assessed with rent, or,

- (ii) the area entered in the counterfoil receipts corresponds with the area in the rent-roll on which the claim is based and that a practice of settlement on measurement prevailed at the time when the rent-roll was prepared,

it shall be presumed that the area of the tenure or holding was settled by measurement. (S. 52)

Note.—The present sub-sec. (6) was substituted for the old sub-sec (6) by Act IV of 1928. The object of the amendment is thus explained in the Notes on Clauses :—“In order to meet certain doubts which have arisen, Sub-sec (6) of S. 52 has been amplified in order to make it clear that an entry of an area in a document may be presumed to have been ascertained on measurement if it is shown that a practice of settlement after measurement was in use at or about the date on which such document was drawn up.” “There was a conflict of judicial opinion as to the construction of the words ‘at the time the measurement on which the claim is based was made.’ In some cases the expression was held to refer to the measurement at the time of the original settlement. (19 C. L. J. 451 ; 31 C. L. J. 68) In a recent Full Bench decision (25 C. W. N. 230) it was held that it referred to the measurement which was made before the institution of the suit. It was necessary, therefore, to amend the section and to make the intention clear. It was considered necessary that there should be some provision for the proof of what the particular area in excess was, when the landlord was unable to indicate what particular land was held in excess, otherwise than by evidence of its specific existence in each case....The presumption provided in the new sub-section will benefit both the landlord and the tenant. In the case of a tenant, if he asks for abatement of rent

on the ground that the area is in defect, when the landlord claims that the land was settled at a lump rental, the tenant can take advantage of this presumption.* The landlord also get the benefit of the presumption." (Council Proceedings)

Scope of the Section.—This section has no application to a suit for assessment of rent in respect of lands which did not form part of the original holding : it applies only to cases where the area of the tenure or holding has increased. (88 I. C. 687) *Prima facie* S. 52 is concerned with cases of alteration of area, not miscalculation of rent ; nor is it intended to provide an exceptional form of relief against mutual mistake. (50 Cal. 957)

Co-sharer landlord.—Prior to the amendment of S. 188 by Act IV of 1928, a cosharer landlord could not bring a suit for excess area under S. 52 even by making the other co-sharer landlords parties to the suit as *pro-forma* defendants.* A suit under S. 52 can now be brought by a co-sharer landlord under the provisions of S. 188 (1) See p.—*ante*.

Additional rent for back-period.—There is nothing in the B. T. Act to debar the landlord from claiming back rents for any additional area, if such additional area was in the use and occupation of the tenant. (29 Cal. 247 ; 26 Cal. 139 ; 21 C. L. J. 309 ; 40 C. L. J. 538.)

One suit under Ss. 30 and 52.—There is nothing in the law which prevents one suit being brought for enhancement under Sec. 30 and for increase of rent under S. 52 ; the two causes of action may be joined in one suit (11 C W. N. 1154).

What is to be proved in a suit for additional rent—In order to bring a case within clause (a) of sub-sec. (1) of S. 52 B. T. Act, it is necessary for the landlord to prove that there is land held in excess of the area for which rent has been previously paid by the tenant. Consequently the landlord must establish the area for which rent has

A suit is brought by a landlord against a tenant for rent of an excess area. What facts must be

proved in
order that the
landlord may
succeed?
3.L. 1920 (a).

previously been paid by the tenant; he must next establish the present area held by the tenant; he is then entitled to claim additional rent in regard to the excess area (14 C. L. J. 146; 24 Cal. 251). The expression "the area for which rent has been previously paid" in sub-sec. (1), cl. (a) means the area with reference to which the rent previously paid has been assessed or adjusted (24 C. W. N. 76 notes; 27 C. L. J. 562.) The burden of proving an increase in "the area for which rent has been previously paid" is on the landlord. (22 C. W. N. 826). In a suit for additional rent for additional area it is not necessary to prove the area at the inception of the tenancy and it is sufficient that since the creation of the tenancy rent has been assessed and the assessment was on the basis of a certain area and the tenant is in possession of lands which were not previously assessed. (25 C. W. N. 204). For the purposes of S. 52 it is not always necessary to ascertain the area of the original grant and the rent thereby reserved. All that the landlord has to show is that the present area is greater than the area for which rent was last paid. The *onus* is then shifted on the tenant to show that the excess land used previously to belong to the holding and was lost by diluvion or otherwise. (5 Pat. 157). Where a tenant is found in possession of land which formed no part of the land originally let out to him, the landlord is entitled to treat the excess land as a new holding, and a suit for rent may be brought in respect thereof independently of S. 52. (23 C. W. N. 635).

Where lands were measured according to a known standard and rent assessed upon that, *held*, that unless it was established that the rent payable was a consolidated rent for lands within defined boundaries the landlord is entitled to claim additional rent. (15 C. W. N. 921) Cox. J. in *Akbarali v. Hira Bibi*, 16 C. L. J. 182 at p. 185 observes: "It appears to me that the whole question is one of intention of parties applicable to the tenancy before the final measurement.

If the landlord originally intended to let and the tenant intended to take such and such a piece of land or such and such a holding, be the number of bighas in it what they may, the fact that area proves to be larger than what was originally stated would not entitle the landlord to additional rent. If, however, he intended to let and the tenant intended to take, so many bighas, be the actual piece of land what it may, the landlord would be entitled to additional rent when the tenant was proved to hold more bighas than were originally let to him." A tenancy may be created (a) by reference to boundaries; (b) by the grant of a block of land described otherwise than by reference to boundaries; (c) by a contract which is made not with reference to any boundaries or a specific block otherwise identifiable but for a certain area at a certain rental or (d) by a tenant squatting upon the land of the Zemindar and by an implied contract of tenancy to pay a fair and equitable rent upon all land in his possession at any time. In case (a) the operative part of the contract lies in the enumeration of the boundaries and any reference to area is merely descriptive and does not affect the identity of the subject matter of the grant. In case (b) any incorrect assertion as to the area will be merely false description and will not affect the liability for the rent reserved. In either of these two cases, the rental may be either a lump sum without reference to rates or a lumpsum based upon a rate or rates per unit of measurement. In case (c) the area is the essence of the contract and any subsequent excess found upon measurement renders the tenant liable to pay additional rent. In determining the area demised, the parties may either resort to measurement or they may agree to accept an assumed figure. In either case, S. 52 operates. In case (d), the liability for excess area arises upon the contract itself and strictly speaking S. 52 is not necessary to fix liability for excess area in such a case. (90 I. C. 862).

. The right of a landlord to recover additional rent for

additional area is a recurring one. He is entitled to exercise it whenever he finds it necessary. (6 C. W. N. 360 ; 12 C. W. N. 204).

Encroachment by tenant.—If a tenant encroaches upon the adjoining land of his landlord, the landlord may either sue him for possession within 12 years of his knowledge or he may treat him as a tenant and get additional rent. (34 C. L. J. 481 ; 2 C. L. J. 125). But the landlord cannot treat the tenant as trespasser at any time after having exercised his option in treating him as a tenant for some time. (4 C. W. N. 508) Encroachments made by a tenant, whether the land encroached upon belongs to the landlord or to a stranger are presumed to have been made for the benefit of his landlord, unless it appears clearly from some act done at the time that the tenant intended to make the encroachment for his own benefit and not to hold as he held the farm to which the encroachment was adjacent. (22 C. L. J. 129).

Possession by a person will be presumed to be held in his own right and adversely to the true owner, but while a tenant taking advantage of his possession as such, takes possession of lands not included in his tenancy, the presumption is that such lands are added to the tenancy and form part thereof for the benefit of the tenant as long as the holding continues and afterwards for the benefit of his landlord, unless it clearly appeared by some act done at the time that the tenant made the encroachment for his own benefit. (22 W. R. 246 ; 35 Mad. 618). If a tenant had encroached upon any land and made it a part of his tenancy, his bound to give that up to his landlord at the determination of his tenancy. (42 C. L. J. 276).

What remedies are open to a tenant in case the landlord has dispossessed the tenant of a

Dispossession of tenant by landlord.—In the absence of a contract to the contrary, the landlord is bound to put the tenant in possession of the land. (35 C. L. J. 292). A person who has been deprived of possession of a part of the demised premises should not be held liable for

the whole rent ; the principle applies with greater force where the dispossession takes place by any act of the landlord. (34 C. L. J. 119.) To constitute an eviction, it is not necessary that there should be actual physical expulsion by force or violence from any part of the premises; any act of a permanent character done by the landlord or his agent with the intention of depriving the tenant of the enjoyment of the demised premises or any portion thereof operates as an eviction. (25 C. L. J. 53). Thus, where the landlord having let out a portion of a land to an earlier lessee, lets it out again with other lands to a subsequent lessee and fails to deliver to him possession of the entire land, the entire rent will be suspended. (46 Cal. 956). But the entire rent will not be suspended where the tenant knew in the beginning of the tenancy that some portion was in possession of another ; he is only entitled to a reduction of rent of that portion (49 Cal. 1019. 26 C. W. N. 826). Similarly, a tenant is not entitled to suspension of the entire rent when a landlord did not, on account of a *bonafide* mistake, put the tenant in possession, the land being largely jungle and little known. (49 Cal. 257.) To apply the doctrine of suspension of rent on account of eviction by landlord the finding must be clear that there has been an eviction in fact and the question must be tried whether the lessor was a party to the eviction and it must also be found as a fact as to whether the act was done by the landlord with the object of depriving the tenant of the peaceful enjoyment of any portion of the demised premises. (44 C. L. J. 191). The tenant is entitled to a suspension of the entire rent, in case of dispossession by the landlord of any portion of the demised land where the rent reserved is a lump rental for the entire land ; but where the rent stipulated is so much per acre or bigha there will be an apportionment of rent. (*Ibid* ; 52 Cal. 470 P. C. ; 33 C. W. N. 509, 715.) [In 55 Cal. 689 it has, however, been observed by B. B. Ghosh and Roy J.J. that even where the rent portion of the holding ? What will the tenant have to prove in the case ? B.L. 1929(a).

by B. B. Ghosh and Roy J.J. that even where the rent

reserved is a lump-sum for the whole land there may be apportionment of rent.* There observation have been considered as *obiter dicta* (as they were made in a case where the rent stipulated was not a lumpsum for the entire land) by Mitter J. in 33 C. W. N. 501 and 715. It has been laid down in 33 C. W. N. 715 that in every case where there is a lump rental and the tenant has been dispossessed by his landlord from a portion of the demised premises, however small that portion may be, the rule of total suspension of rent must be applied. In such cases the landlord can recover nothing during the continuance of the dispossession, unless he can prove some right or equity to an apportionment. In 108 I. C. 587, it has been held (by Cumming & Mukherjee J.J.) that no hard and fast rule can be laid down as to when suspension of the entire rent should be ordered or only abatement of rent should be allowed where a tenant is dispossessed by the landlord of a portion of the holding. Each case has to be decided on the particular facts of the case. In 33 C.W.N. 367 it has been held (by Page and Mallik J.J.) that where it can be proved that certain portions of the rent are specifically assessed and appropriated to certain parcels of the demised land, and in respect of a distinct parcel of which the rent is specified there is eviction by the landlord, the landlord is entitled to receive, notwithstanding the eviction, his rent in respect of the other portions of the land which are separately and specifically assessed for rent. But where the tenancy is an indivisible one in which a lumpsum for rent is to be paid in respect of the

* To hold that in every case of dispossession of the tenant from a part (of the demised premises) there should be an entire suspension of rent..... seems to me hardly consistent with justice.....I do not see why he (the tenant) should not pay rent for the land of which he remains in possession. The court should always endeavour to apportion the rent whenever possible and be very careful in applying the rule of suspension of rent which can only be allowed in exceptional cases having regard to the circumstances of the case." (55 Cal. 689),

whole of the demised land and the tenant is dispossessed by the landlord of a portion of the land, there will be a total suspension of the rent until that portion is restored to the tenant. In 112 I. C. 74, it has been held (by B. B. Ghosh and Rose J.J.) that where the lands demised were included in several schedules and each schedule was separately assessed, it was not a case for total suspension of rent.]

Dispossession by third party—Where a tenant is evicted from possession of a portion of a holding or tenure by a person claiming under a title paramount, the tenant is entitled to a reduction of rent. (10 W.R. 120, 12 W. R. 109; 21 Cal. 1005; 43 Cal. 554). Eviction by title paramount is a good defence to a suit for rent; to constitute such a defence three conditions must be fulfilled:—(1) the eviction must be from something actually forming part of the premises demised; (2) the party evicting must have a good title and (3) the tenant must have quitted against his will (18 C. W. N. 52). To succeed in a suit for rent with a plea of eviction by title paramount it is not enough for the tenant to prove the fact of eviction against his will. He must further prove a defect in his lessor's title which was responsible for such eviction by a third party. (33 C. W. N. 106).

Abatement of rent.—In a suit for rent the tenant can claim abatement of rent and no separate suit is necessary. (51 Cal. 1022; 41 C. L. J. 330; 6 P. L. J. 665). A tenant is entitled to abatement of rent in respect of leased out land of which he did not obtain possession. (27 C.W.N. 166). A tenant's right to claim abatement of rent on account of the landlord's failure to put him in possession of the whole of the land demised will, however, be lost by acquiescence and laches, if, notwithstanding the failure of the tenant to get possession of the entire land, he continues to pay the full rent for a long number of years. (105 I. C.

741). For abatement of rent on account of diluvion, see new Sec. 86-A.

C—Payment of rent.—(Ss. 53—55)*

1. Instalment of rent.—*Subject to agreement or established usage*, a money-rent payable by a tenant shall be paid in four equal instalments falling due on the last day of each quarter of the agricultural year (S. 53).

Note.—The words of the section indicate that there may be an agreement in modification of the provisions of four equal instalments. (18 C. L. J. 175) Rent should ordinarily be regarded not as accruing from day to day but as falling due only at the stated times according to the contract of tenancy or the general law in the absence of such contract, as laid down in S. 53, B. T. Act. (21 Cal. 383) Thus, where the instalment falls due after the confirmation of sale, though under S. 169 (1) (c) B. T. Act, the title of the auction-purchaser becomes perfected only on the date of confirmation of the sale, he is liable to pay the instalment though the instalment covers a period antecedent to the confirmation. (*Ibid*)

This section applies to money-rents only. Produce-rents are payable when the produce is gathered or at such other times as are agreed on between the parties or where there is no agreement, according to custom. In sec. 3 (5) it is provided that in Ss. 53-68 both inclusive, rent includes also money recoverable under any enactment for the time being in force as if it was rent. Hence sums payable under the Cess Act, the Survey Act etc. are, subject to agreement or established usage or statutory enactment, payable in four quarterly instalments.

2. Time and place for payment of rent.—
(1) Every tenant shall pay or tender each instalment of rent before sunset of the day on which it falls due :

Provided that the tenant may pay or tender the rent payable for the year at any time during the year before it falls due.

(2) The payment or tender of rent may be made—

(i) at the landlord's village office, or at such other convenient place as may be appointed in that behalf by the landlord; or

(ii) by postal money order in the manner prescribed by rules made by the Local Government.

A tender may also be made by depositing the rent in Court in accordance with the provisions of section 61.

(3) Where rent is sent by postal money-order in the manner prescribed, the court may presume, until the contrary is proved, that a tender has been made.

(4) When a landlord accepts rent sent by postal money-order, the fact of this acceptance shall not be used in any way as evidence that he has admitted as correct any of the particulars set forth in the postal money-order form, or that he has waived his rights under sections 26D, 26E, 26F or 26J.

(5) Any instalment or part of an instalment of rent not duly paid at or before the time, when it falls due shall be deemed to be an arrear. (S. 54)

Note.—This section has been substituted for the old one by Act IV of 1928. The amendment of S. 54 is intended to remove the practical difficulties which at present discourage the tenants from paying their rent by money-order and cause the landlords to dislike the system of payment. It has been made clear that a tender made at the landlord's village office should be sufficient, and that a postal receipt of money-order would be presumed by the Court as tender of rent by the tenant. The Select Committee's proposal to insist on a post-office certificate of the landlord's refusal to accept a rent money-order has not been accepted; because it would not be practicable to obtain such certificate and, even if it could be obtained it would not be evidence unless formally proved. The main

reason which makes the landlords reluctant to accept rent tendered by postal money-order and thus discourage the tenants from making use of this method, has been removed by providing in sub-section (4) that the landlord's acceptance of such rent shall not be treated as admission or evidence as regards the particulars of the tenancy set forth in the money-order or operate as a waiver of his rights under the clauses relating to the transferability of occupancy holdings." (Notes on Clauses).

3. Appropriation of payments—(1) When a tenant makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited and the payment shall be credited accordingly. (2) *But if he does not make any such declaration*, the payment may be credited to the account of such year and instalment as the landlord thinks fit (S. 55)

Note.—As a general principle where there are several debts owing to one person from another the option lies with the debtor, in making the payment to declare to which debt he intends it should be applied. But if the debtor does not specify the debt to which the payment is to be applied the creditor may apply it to any lawful debt due to him whether its recovery is barred by limitation or not. (Cf. Sers. 59 and 60 of the Indian Contract Act.) Rent does not necessarily include interest. Thus where a sum of money was paid by a tenant to a landlord as rent and the latter received it as such, the landlord was not entitled to apply that money towards any interest which might be due at that time. (11 C. W. N. 110).

D—Receipts and Accounts. (Ss. 56-60)

1. Tenant making payment to his landlord entitled to a receipt—(1) Every tenant who makes a payment on account of rent to his landlord shall be entitled to obtain forthwith from the landlord a written

receipt, for the amount paid by him, signed by the landlord. (2) The landlord shall prepare and retain a counterfoil of the receipt. (3) The receipt and counterfoil shall specify such of the several particulars shown in Schedule II to the Act as can be specified by the landlord at the time of payment. (Provided that the Local Government may, from time to time, prescribe or sanction a modified form either generally, or for any particular local area or class of cases). (4) If a receipt does not contain *substantially* the particulars required by this section, it *shall be presumed, until the contrary is shown*, to be an acquittance in full of all demands for rent up to the date on which the receipt was given. (S. 56.)

2. Tenant entitled to full discharge or statement of account at close of year.—(1) Where a landlord admits that all rent payable by a tenant to the end of the agricultural year has been paid, the tenant shall be entitled to receive from the landlord, free of charge, within three months after the end of the year, a receipt in full discharge of all rent falling due to the end of the year, signed by the landlord. (2) But where the landlord does not so admit, the tenant shall be entitled, on paying a fee of 4 annas, to receive within 3 months after the end of the year, a statement of account specifying the several particulars shown in Schedule II to this Act or in such other form as may, from time to time, be prescribed by the Local Government either generally or for any particular local area or class of cases. (3) The landlord shall prepare and retain a copy of the statement containing similar particulars. (S. 57.)

3 Penalties and fine for withholding receipts and statements of accounts and failing to keep counter-parts.—(1) If a landlord, without reasonable cause refuses or neglects to deliver to a tenant a receipt containing the particulars required by S. 56 for any rent paid by the tenant the tenant may, within 3 months from the date of payment, institute a suit to recover from him such penalty, not exceeding double the amount or value of that rent, as the Court thinks fit.

(2) If a landlord, without reasonable cause, refuses

or neglects to deliver to a tenant demanding the same, either the receipt in full discharge, or if the tenant is not entitled to such a receipt, the statement of account for any year, required in S. 57, the tenant may within the next ensuing agricultural year, institute a suit to recover from him such penalty as the Court thinks fit, not exceeding double the aggregate amount or value of all rent paid by the tenant to the landlord during the year for which the receipt or account should have been delivered.

(3) If a landlord or his agent, without reasonable cause fails to deliver to the tenant a receipt or statement, or to prepare and retain a counterfoil or copy of a receipt or statement as required by either of the S. 56 or 57, such landlord or agent, as the case may be, shall be liable to a fine not exceeding Rs. 50, to be imposed, after summary inquiry by the Collector.

(4) **Summary inquiry by the Collector—**The Collector may hold a summary inquiry under sub-sec. (3) either on information received from a revenue-officer within one year or upon complaint of the party aggrieved made within 3 months from the date of failure or upon the report of a Civil Court.

(5) **Penalty for vexatious proceedings—**Where, in any case instituted under the above clause, the Collector discharges any landlord or agent and is satisfied that the complaint of the tenant on which the proceedings were instituted is false or vexatious, the Collector may in his discretion, by his order of discharge, direct the tenant to pay to such landlord or agent such compensation, not exceeding Rs. 50, as the Collector thinks fit.

(6) **Appeal.**—An appeal shall lie to the Commissioner of the Division against any order of the Collector imposing a fine under sub-sec. (3) or awarding compensation under sub-sec. (5) and the order passed by the Commissioner on such appeal shall, subject to any order which may be passed on revision by the Board of Revenue, be final.

(7) **Recovery of the fine or compensation.—**

Any fine imposed or compensation awarded under this section may be recovered in the manner provided by any law for the time being in force for the recovery of a public demand.

(8) **Collector's power.**—For the purpose of an enquiry under this section the Collector shall have power to summon, and enforce the attendance of, witnesses and compel the production of documents in the same manner as is provided in the case of a Court under the Civil Procedure Code, 1908.

(9) The existence of a dispute as to the rent or area of a tenancy on account of which rent is paid shall not be deemed to be a reasonable cause for refusing, neglecting or otherwise failing to deliver—

- (a) a receipt for any amount actually paid on account of rent, or
- (b) the statement of account required by section 57, and the refusal of the tenant to accept the receipt shall not be a reasonable cause for failing to prepare and retain a counterfoil of such receipt, as required by section 56. (S. 58)

Note.—The new sub-section (9) has been added to S. 56 to make it clear what will not be a reasonable excuse on the part of the landlord for not granting a receipt or statement of account or for not retaining a counterfoil fully filled up.

4. Local Govt. to prepare forms of receipts and accounts.—The Local Government shall cause to be prepared and kept for sale to landlords at all subdivisional offices forms of receipts, with counterfoils and of statements of account, suitable for use under Ss. 56-58. (2) The forms may be sold in books with the leaves consecutively numbered or otherwise as the Local Government thinks fit (S. 59).

Note.—It is at the discretion of the landlords to use these forms.

5. Effect of receipt by registered proprietor, manager or mortgagee.—Where rent is due to

the proprietor, manager or mortgagee of an estate, the receipt of the person registered under the Land Registration Act, 1876, as proprietor, manager or mortgagee of that estate or of his agent authorized in that behalf, shall be a sufficient discharge for the rent, and the person liable for the rent shall not be entitled to plead, in defence to a claim by the person so registered, that the rent is due to any third person.

But nothing in this section shall affect any remedy which any such third person may have against the registered proprietor, manager or mortgagee. (S 60).

Note.—Section 60 provides that the receipt of the proprietor, manager, or mortgagee or of his agent duly authorised in that behalf shall be sufficient discharge for the rent and debars the person liable for the rent from pleading in defence to a claim by the person registered that the rent is due to a third person. Suppose, A, a registered proprietor of an estate, sues for rent a tenant, B, whose land is admittedly situate within that estate and its rent is payable to the proprietor of such estate. B got the tenancy from C who claims to be the proprietor but who has not as yet succeeded in having his name registered under Act VII (B. C.) of 1876. B cannot under this section, plead that rent is not payable to A; and though he may not deny C's title to the estate under Sec. 116 of the Indian Evidence Act, may defeat C's claim by proving that C is not the registered owner.

E—Deposit of rent. (Ss. 61—64)

In what court and in what circumstances can a tenant deposit rent to prevent the running of interest? Can a transferee of a non-transfer-

1. Application to deposit rent in Court.—1. In any of the following cases, namely:—

(a) when a tenant tenders money on account of rent and the landlord refuses to receive it or refuses to grant a receipt for it;

(b) when a tenant, bound to pay money on account of rent, has reason to believe owing to a tender having been refused or receipt withheld on a previous occasion,

that the person to whom his rent is payable will not be willing to receive it and to grant him a receipt for it ;

(c) when the rent is payable to co-sharers jointly, and the tenant is unable to obtain the joint receipt of the co-sharers for the money and no person has been empowered to receive the rent on their behalf ;

(d) when the tenant entertains a *bonafide* doubt as to who is entitled to receive the rent,

the tenant may present to the Court having jurisdiction to entertain a suit for the rent of his tenure or holding an application in writing for permission to deposit in the Court a sum not less than the amount of the money then due

2. The application (i) shall contain a statement of the grounds on which it is made ; (ii) shall state in cases (a) and (b)—the name of the person to whose credit the deposit is to be entered and the name of his common agent, if any ; in case (c)—the names of sharers to whom the rent is due or of so many of them as the tenant may be able to specify ; and in case (d)—the names of the person to whom the rent was last paid and of the person or persons now claiming it : (iii) shall be signed and verified in the manner prescribed in Rule 15, sub rules (2) and (3) of Order VI of the Civil Procedure Code, by the tenant or where he is not personally cognisant of the facts of the case, by some person so cognisant ; and (iv) shall in cases (a) and (b) be accompanied by the prescribed cost of transmission of the money deposited to the landlord and in cases (c) and (d) by a fee of the prescribed amount. (S 67)

Note.—It is not necessary that the tenant must present the application in person. A deposit of rent though not made by a tenant himself but made *on his behalf* by a transferee of the holding is a valid deposit (25 Cal. 289). [But a transferee of a non-transferable holding cannot make a valid deposit *on his own behalf* ; for transfer of such a holding does not give any right to the transferee as against the landlord.]

A valid deposit under S. 61 operates as an acquittance (21 Cal. 680 ; 20 C. L. J. 148 at p. 152). A deposit in Court

able holding make a valid deposit of rent in court on his own behalf ? B.L. 1920(a). Under what circumstances can a tenant deposit rent in a Civil Court ? B.L. 1914(b) '18(b), '22(a) P. L. 1910.

State the grounds on which a tenant can deposit his rent in Court the procedure for making such a deposit and the effect of a short deposit. B.L. '17 (a). What are the grounds upon which a tenant can make a deposit of rent in the Civil Court ? B.L. 1926(a). On what grounds may a tenant deposit his rent in Court What would be the effect of a receipt granted by the Court on a deposit having been

made where the amount of rent payable is disputed and it is found subsequently that the amount deposited falls short of the full amount due?

B.L. 17 (b). Under what circumstances can a tenant deposit his rent in court? Illustrate the procedure for such deposit.

B.L. 1921.

(suppl.).

1921 (b).

1927 (b).

1929 (a).

What are the essentials of a valid deposit?

B.L. 1929(a).

Under what circumstances can a valid deposit of rent be made in Court?

On refusal to accept rent by the landlord, a tenant remitted the same by

money-order, kist by kist, which was not accepted.

Discuss whether the tenant is

by a tenant of less than the amount of arrears of rent due is not a valid deposit under S. 61 (18 C. W. N. 84). [But see 20 C. L. J., 152 at p. 156 and 15 Cal. 166. In the latter case it has been held that the words "full amount of the money then due" in S. 61 and the words "the amount of rent payable by the tenants" in Sec. 62, mean nothing more than the words "what the tenant shall consider the full amount of rent due from him at the date of the tender to the Zemindar" as used in Sec. 46 Bengal Act VIII of 1869 and have no relation whatever to the amount of rent *justly due* or *justly payable* by the tenant.]

Under Sec. 61, a tenant can deposit money rent only. No deposit can be made of rent in kind under the section. But where the parties have agreed that upon failure to deliver the rent payable in kind a fixed sum is to be paid in lieu thereof, the entire rent is payable in cash and in a case of this description the provisions of S. 61 are clearly applicable (20 C. L. J. 153; 19 C. W. N. 1143).

To stop interest on rent running in a case governed by the B. T. Act a tender of a rent which is improperly refused need not be followed by a deposit of rent in Court under S. 61 and such a tender, if kept good, is sufficient to stop interest running from the date of tender (35 Cal. 34; 34 Cal. 305; 7 C. W. N. 720 over-ruled). A tender which has been validly made and improperly refused is kept good if the person who has made the tender has from that day always kept the money ready to be paid on demand. (35 Cal. 34). Where a tenant pleads tender of payment as a ground for not being saddled with interest, the *onus* lies on him to prove that he had made such a tender. (5 W. R. 69.)

A tender must be unconditional. A tender of payment accompanied by a condition which prevented it from being a perfect and complete tender does not relieve the payee of the obligation to pay interest. (27 C. W. N. 299). A tender to be valid must include the entire amount due as

principal and interest. But a landlord in accepting a part payment does not lose his right to recover the balance due (37 C. L. J. 222.)

liable to pay interest when it was proved that he did not deposit the rent in Court. B. I. 1921 (a).

3. Receipt granted by Court for rent deposited to be a valid acquittance.—(1) If it appears to the Court to which an application is made under S. 61 that the applicant is entitled, under that section, to deposit the rent, it shall receive the rent and give a receipt for it under the seal of the Court and (2) the receipt shall operate as an acquittance for the amount of the rent payable by the tenant and deposited as aforesaid in the manner and to the same extent, as if that amount of rent had been received in cases (a) and (b) of S. 61 by the person specified in the application as person to whose credit the deposit was to be entered, in case (c) of that section by the co-sharers to whom the rent is due and in case (d) of that section—by the person entitled to the rent. (S. 62.)

4. Procedure for payment to the landlord of rent deposited—The Court receiving a deposit—

- (i) in case (a) or (b) of section 61 shall forthwith forward the same by postal money-order to the address of the landlord, or of the common agent, if any, of the landlord empowered to receive rent ;
- (ii) in case (c) or (d) of that section shall forthwith cause to be affixed in a conspicuous place at the Court-house a notification of the receipt thereof containing a statement of all material particulars, and, if the amount of the deposit is not paid away under section 64 within the period of fifteen days next following the date on which the notification is so affixed, the Court shall forthwith in case (c) cause a notice of the receipt of the deposit to be posted free of charge at the landlord's village office, if any, and in some conspicuous place in the village in which the tenure or holding or any portion thereof is situated, and in case (d) cause a like notice to be served free of charge on every person who it

" has reason to believe claims, or is entitled to, the deposit. (S. 63).

Note.—Changes have been made in Ss. 63 and 64 in order to make it compulsory on the Courts in certain cases to send rents deposited under cls. (a) and (b) of S. 61 by money-order to the landlord. The drafting of S. 63 has been amended.

5. Payment or refund of deposit—(1) The Court may pay the amount of the deposit notified under S. 63 to any person appearing to it be entitled to the same or may, if it thinks fit, retain the amount pending the decision of a Civil Court as to the person so entitled.

(2) If no payment is made under cl. (i) of S. 63 or under Sub-cl. (1) of this section before the expiration of 3 years from the date on which a deposit is made, the amount deposited may, in the absence of any order of a Civil Court to the contrary, be re-paid to the depositor upon his application and on his returning the receipt given by the Court with which the rent was deposited.

(3) No suit or other proceeding shall be instituted against the Secretary of State for India in Council, or against any officer of the Government, in respect of anything done by a Court receiving a deposit under S. 62 ; but nothing in this section shall prevent any person entitled to receive the amount of any such deposit from recovering the same from a person to whom it has been paid under this section. (S. 64).

5. Penalty for refusing to receive rent tendered by postal money-order or deposited.—

It a landlord or his agent refuses without reasonable cause to receive payment of rent remitted by postal money-order or deposited in Court, the landlord shall be precluded from recovering by suit interest, costs or damages in respect of the same, and the Court may in addition award to the tenant damages not exceeding twenty-five per cent, on the whole amount claimed by the plaintiff.

The plea of the existence of any dispute as to, the

amount of rent or area of land of the tenure or holding shall not be deemed to be a reasonable cause under this section.

Provided that, when a landlord accepts rent, which has been deposited or remitted by postal money-order, the fact of his acceptance shall not be used in any way as evidence that he has admitted as correct any of the particulars set forth in the application for permission to deposit or in the postal money-order form (S. 64 A).

Note.—"In order to prevent landlords from harassing tenants by means of suits for rent which the latter have already tendered by money order or deposited in the civil Court, it is proposed by the new sec. 64A to preclude the landlord from recovering in such suit damages, interest or costs and also to make them liable for damages" (Notes on Clauses).

F.—Arrears of rent. (Ss 65—68.)

1. Liability to sale of permanent tenures, holdings at fixed rates and occupancy-holdings for arrears of rent—Where a tenant is a *permanent tenure-holder* or a *raiyyat holding at fixed rate* or an *occupancy raiyyat*, he shall not be liable to ejection for arrears of rent, but his tenure or holding shall be liable to sale in execution of a decree for the rent thereof, and the rent shall be a first charge thereon. (S 65).

What is the landlord's remedy in case of default of payment of rent of an occupancy raiyyat? B. L. 1896.

Scope of the Section—This section applies only in the cases of (i) the permanent tenure-holders, (ii) raiyyats at fixed rates and (iii) occupancy raiyyats. For the liability of other classes of tenant *viz.* non-permanent tenure-holders, non-occupancy raiyyats and under-raiyyats for arrears of rent, *vide* S. 66 *infra*.

Arrears of rent.—Any instalment or part of an instalment of rent not duly paid at or before the time when it falls due, is called an arrear of rent. Sec. 54 (3).

What is an arrear of rent? B.L. 1911 (b).

Rent.—The word Rent in this section includes road-cess payable by the tenant. *Vide* Sec. 3 (5).

Produce rent—A holding which is held at produce-

rent or partly at produce-rent and partly at money rent is liable to be sold in execution of a decree for arrears, as it is a rent-decree and not a money-decree. (5 Pat. L. J. 641).

"Shall not be liable to ejectment"—A permanent tenure holder, a raiyat at fixed rate and an occupancy raiyat are all liable to be ejected for breach of a condition carrying forfeiture (*vide* Secs. 10, 18 and 25). Such condition is restricted to what is consistent with the provisions of this Act, in case of a permanent tenure-holder, if the contract is made after the 1st of Nov. 1885 and in the case of the other two classes of tenants, irrespective of the time when the contract was made, before or after the commencement of this Act. An occupancy raiyat may further be ejected for misuse of land held by him. These tenants cannot be ejected on any other grounds.

The result of Sec. 65 read with Secs. 10, 18 and 25 would be as follows :—(1) Raiyat at fixed rate or an occupancy raiyat cannot be ejected for arrears of rent as such nor for arrears of rent reserved as a ground of ejectment in a contract of tenancy : (2) A permanent tenure-holder cannot be ejected for arrears of rent as such nor for arrears of rent reserved as a ground of ejectment in the contract of tenancy, if the contract was made after the 1st of November, 1885 : but he may be ejected for arrears of rent reserved as a ground of ejectment in the contract of tenancy if such contract was made *before* the 1st of November 1885.

Under the terms of S. 65, permanent tenure-holders, raiyats holding at fixed rates and occupancy raiyats cannot be ejected merely on the ground of arrears of rent. They can be ejected only on the grounds specified in Secs. 10, 18 and 25 respectively and they cannot contract themselves out of the provisions of this section even though Secs. 178 and 179 are inapplicable. Only non-occupancy raiyats and under-raiyats can now be ejected for arrears of rent. But the tenures and holdings of tenants of the first three classes can

be sold in execution of decrees for arrears of rent and the rent is a first charge upon them.

Sale in execution of rent-decree—Read carefully Chapter XIV *post*.

"Rent shall be a first charge"—Whenever a tenure or holding is sold otherwise than in execution of a decree for arrears of rent, it is sold subject to the lien of the landlord on it for any rent due at the time of sale. The landlord is, therefore, in the position of a first mortgage as far as the rent is concerned. So, where a tenure is sold in execution of a money decree or a mortgage-decree, the purchaser takes it subject to the liability for the rent which has accrued due in respect thereof at the time of its purchase. (The purchaser, of course, is not *personally* liable.) But the case is different when the tenure or holding is sold in execution of a decree for its own arrears of rent, for, in this case it passes to the purchaser free of all liability for the previous arrears (20 C. W. N. 749). [But where a tenure or holding is sold in execution of a decree for rent saddled with liability for previous arrears, the purchaser is liable for such arrears. 6 C. W. N. 877)].

Charge.—The "charge" referred to in this section is not such a "charge" as is defined by Sec. 100 of the Transfer of Property Act; and a landlord is not restricted by the provisions of this Act to execute a decree obtained by him for arrears of rent in the first instance by sale of the tenure or holding, but he is at liberty to execute it in the ordinary manner against the person or other property, whether moveable or immoveable of the tenant. (15 Cal. 492). A decree holder who has obtained a decree for rent is free to proceed against the person or property of the judgment-debtor; he is under no obligation to proceed in the first instance against the defaulting tenure. (18 C. L. J. 29; 36 Cal. 103). "Sec. 65, creates a first charge upon the tenure for the rent of it, and puts the landlord in the position of a first mortgagee,

"Rent is a first charge on the holding or tenure."

What do you understand by it?

B.L. 18 (a), 12(b), 21(b), 1927 (a).

"Rent is first charge on the tenure."

Explain and discuss.

B.L. 1923(a), 1928 (b).

"Rent is a first charge on the tenure of a permanent tenure holder."

Explain this with special reference to the meaning of the word 'charge.'

B.L. 1924(b).

Discuss whether a purchaser at rent sale has priority over a purchaser in execution of a mortgage decree.

C.U. 1921(b).

so far as the rent is concerned, but the tenant also remains personally liable for the rent, so that the landlord's position is this ; he has a mortgage or charge upon the tenure for the rent and has a remedy against the tenant personally for the debt due to him. That being the case, he has a right to avail himself of either ~~of his remedies.~~ ~~He may, if he~~ chooses, bring an action in which he claims to establish his lien upon the tenure to sale notwithstanding any other charge which may have been made upon it, and that whether the tenant had any other property or not and whether some one else had a charge by way of contractual mortgage upon the tenure." (*Per Petheram*, C. J. in 17 Cal. 301).

A tenant mortgaged his holding to B. The holding is sold in execution of a decree obtained by a co-sharer landlord for his share of the rent. Can the purchaser annul the mortgage in favour of B ? Give reasons for your answer.
C.U. 1919(b).

Decree by co-sharer landlord.—The "decree" referred to in S. 65 for the satisfaction of which a tenure, or holding can be brought to sale is a decree obtained by *all* the landlords or at all events a decree obtained by some of the landlords for his share of the rent making his co-sharers parties defendants to the suit, under S. 148-A. The Bengal Tenancy Act does not provide for the sale of a tenure or holding, as the case may be, at the instance of a co-sharer landlord for the rent separately due to him ; such a sale must be under the provisions of the Civil Procedure Code and would not carry with it the special incidents attaching to sale under the Bengal Tenancy Act. Where, therefore, a fractional co-sharer has obtained a decree for *his share of the rent* only, such a decree is not a *rent-decree* as contemplated by the B. T. Act but only a *money-decree* and the decree-holder cannot, therefore, sell the tenure or holding but only the *right, title and interest* of the judgment-debtor in execution of his decree. But a co-sharer landlord may (since the passing of Act IV of 1928) institute a suit to recover the rent due to him in respect of *his* share in a tenure or holding, by making all the remaining co-sharer landlords parties defendants to the suit and claiming that relief be granted to him in respect of his share of the

rent against, the entire tenure or holding. (*vide* new S. 148-A*)
see p. 15 *et seq.*

A co-sharer landlord who is entitled to sue for his share of the rent separately may follow one of the following courses for recovery of rent :—(1) He may bring a suit for *his* share of the rent separately on the basis of his right of separate collection. [In such case the decree will be a money-decree.] (2) He may join with his other co-sharers in bringing one suit for the *entire* rent [In such a case the decree will be a rent-decree.] (3) He may (under the general law) bring a suit for the *whole* rent by making the other co-sharer landlords, who refuse to join him as plaintiff, — parties defendants. [Such a suit will be treated as one by the entire body of the landlords and the decree made therein will carry with it all the incidents attaching to such a suit. (35 Cal. 331 P. C.)] (4) He may alone bring a suit for rent by framing the suit as one under Sec. 148-A. [In this case also, the decree will be a rent-decree.] When a co-sharer brings a suit under S. 148-A, B. T. Act he should make the other co-sharers parties defendants to the suit and claim that relief be granted to him in respect of his share of the rent, against the entire tenure or holding.

Decree by assignee for arrear of rent.—When arrears of rent are assigned (*apart from the landlord's interest in the land*) to a third party, they are no more than civil debts

* Under the old S. 148-A, a co-sharer landlord had to sue for rent due to all the co-sharer landlords in respect of the tenure or holding and in case he was unable to ascertain the dues of the co-sharers he was entitled to proceed with the suit for his share of the rent and such a decree was a rent-decree. Under the new section a co-sharer landlord is entitled to sue for his own share of the rent by making the other co-sharer landlords parties defendants and a decree in such a suit will be a rent decree against the entire tenure or holding. Co sharer-landlords who are made parties defendants on receiving summons may join as co-plaintiffs and the court will pass a decree specifying separately the amounts payable to each co-sharer and the decree will be a rent decree. But if they do not join in the suit they will be debarred from getting any decree for the period in suit.

and such an assignee cannot claim the benefit of Sec. 65 of the Bengal Tenancy Act. Suits for back-rents by an assignee of the same are not suits for rent under the Act: they are suits for *debt* only, for 'rent under Sec. 3 (5) is "whatever is lawfully payable by a tenant to his *landlord*" and the assignee cannot have been the landlord of the defendant tenant. [But the person to whom the land, the rent for which is claimed, as also the arrears of rent are transferred, is an assignee of the whole interest of the landlord and is a "landlord" within the meaning of Act. (7 C. L. J. 425, 35 Cal. 331]. A sale held at the instance of an assignee of the arrears of rent *who is not an assignee of the landlord's interest in the land*, has, utmost, the effect of a sale held in execution of a *money-decree* under the Civil Procedure Code. Such a sale, accordingly, does not affect the interest of unrecorded co-sharers in the tenure who are not parties to the decree or the execution-proceedings. (I. C. L. 500).

A is the owner of a putni, B holds a jama of certain land, within the putni under A. A brings a suit for rent against B and obtains a decree. The next year the putni is sold under the Putni Regulation and purchased by C. Thereafter A executes his decree and prays for the sale of the holding of B. Can he do so? B.L. 1918(a).

Decree for arrears of rent by an out-going landlord.—To acquire the right to bring the tenure or holding, as the case may be, to sale, not only the person obtaining the decree must be the landlord at the time, but the person seeking to execute it by sale of the tenure or holding must have the landlord's interest vested in him. So, if a landlord, *after obtaining a decree* for arrears of rent against a saleable tenure loses his interest in the estate, he can not bring the defaulting tenure itself to sale in execution of a decree for arrears, (*Hemchandra v. Monmohini*, 3 C. W. N. 604). This decision has, however, been over-ruled by the Full Bench case of *Khatra Pal v. Kirtaridhamayee* (33 Cal. 566), in which it has been decided that if at a time when a suit for rent is instituted and a decree is made, the plaintiff is still the landlord the fact that he subsequently sells his landlord's interest does not prevent him from obtaining the benefit of Sec. 65 in bringing to sale the tenure or holding in execution of such decree, the rent continuing as a first charge thereon. But

see the Privy Council case of *Forbes v. Maharaj Bahadur* (41 Cal. 926 P. C.) where their Lordships of the Judicial Committee have held that the right to bring the tenure or holding to sale under S. 65 being exclusively in the landlord, a person to whom certain rents are due and who obtains a decree therefor after he has parted with the property in which the tenancy is situate has no such right. The case of *Khetra Pal v. Kriarthamayee* was distinguished on the ground that in that case, the landlord did not part with the property and did not thus put an end to the relationship of landlord and tenant until the decree in suit for rent, whereas in the Privy Council case the landlord transferred his interest before the institution of the suit.

A obtained a decree for arrears of rent in respect of a tenure against B, subsequently he sold his landlord's interest to C and then applied for execution of the rent decree and the defaulting tenure was attached. Discuss whether he is entitled to bring the tenure to sell in execution of his rent decree in spite of his having ceased to be the landlord at the time. B. L. '11 (a). State and explain the principle laid down by the P. C. in *Forbes v. Maharaj Bahadur*. B. L. 1928(a), 1927 (b). A landlord after he has sold his property sues for back rents and obtains a decree. Can he execute the decree by sale of the

The landlord's interest may cease either (i) before suit or (ii) after suit but before decree, or (iii) after decree but before execution or (iv) after execution but before sale. In case (i) i. e. if the landlord's interest ceases before the institution of the suit, the decree obtained by the landlord is not a rent decree (*Forbes v. Maharaj Bahadur*, 41 Cal. 926 P. C.) In case (ii) i. e. where the landlord ceases to have interest after the date of the suit but before the decree is obtained, the decree obtained by the landlord cannot be executed as a rent decree. (*Ibid*; *Ramkali v. Madan Mohan*, 98 I. C. 995.) [The contrary view was held in *Chhatrapat v. Gopichand*, 26 Cal. 750] In case (iii) i. e. where the landlord's interest ceases after the decree is obtained but before the application is made for execution, the decree may be executed as a rent-decree. (*Khetra Pal v. Kriarthamayee*, 33 Cal. 565 F. B. overruling *Hemchandra v. Monmohini*, 3 C. W. N. 604) [But see *Forbes v. Maharaj Bahadur*, 41 Cal. 926 where there are observations contrary to the principle upon which the judgment of the Full Bench in *Khetra Pal v. Kriarthamayee* is based.] In case (iv) i. e. where the landlord ceases to have interest after the application for execution is made and before the sale, the decree may be executed as a rent-

tenure? B.L. 1919 (a). A Zeminder having parted with all his interest in the Zemindari brought a suit for arrears of rent against the tenant and obtained a decree. Discuss in the light of *Forbes v. Maharaj Bahadur Sing* (41 Cal. 925) whether it is rent decree within the meaning of the B.T. Act and whether it can be executed as such thereunder? B.L. 1920(a). What is the distinction between a rent-decree and a money-decree? B.L. '14 (b), '18(b), '22(a), 1926 (a). Discuss the respective rights acquired by a purchaser at a sale in execution of (i) a rent-decree and (ii) a money-decree. B.L. 1928(b). State fully the distinction between a

decree. (*Syedunnessa Khatun v. Amiruddin*, 45 Cal. 294; *Manindranath v. Ashutosh*, 25 C. L. J. 626. [According to the observations made by the Privy Council in *Forbes v. Maharaj Bahadur* the decree cannot, however, be executed as a rent-decree. But in *Syedunnessa v. Amiruddin* it has been held that those observations were *obiter dicta* and in *Manindra v. Ashutosh*, Woodroff and Cumming J.J. have held that the Full Bench case of *Khetra Pal v. Kritarthamayee* has not been overruled by the Privy Council decision in *Forbes v. Maharaj Bahadur*.]

Decree against outgoing tenant—A decree obtained by a landlord against a tenant who ceased to be a tenant (because in a previous rent-decree the tenancy had been sold) cannot be executed as a decree for rent. (46 Cal. 876.)

Assignment of decree for arrears of rent.—A rent-decree if assigned ceases to be a rent-decree and becomes only an ordinary civil demand recoverable under the Civil Procedure Code (1 C. W. N. 183). A sale held at the instance of the assignee of a rent-decree who is not also the assignee of the landlord's interest in the land, if legal, has at most the effect of a sale held in execution of a decree for money under the C.P. Code (1 C.L.J. 500) In *Sudhyanya v. Gouranga* (41 I. C. 542) it has, however, been held by Richardson and Walmsley J.J. after a review of all the cases that cl. (h) [now cl. (n)] of S. 148 forbids the assignee of a decree for arrears of rent to make any application to execute the decree, even as a simple decree for money under the C. P. Code. S. 148, cl. (o) [old cl. (b)] provides as follows :—"Notwithstanding anything contained in Rule 16 of Order 21, C. P. Code, an application for the executions of a decree for arrears obtained by a landlord shall not be made by an assignee of the decree unless the landlord's interest in the land has become and is vested in him."

Difference between a rent-decree and a

money-decree.—In a rent-decree the whole tenure or holding, as the case may be, passes to the auction purchaser in execution sale. But in a money decree (including cases where, although the suit is for rent, but the decree passed in it has no more force than an ordinary Civil Court decree, for instance, a decree obtained by a co-sharer landlord for *his* share of the rent without proceeding under S. 148-A or a decree for arrears of rent obtained by a landlord after he has parted with his interest) only the right, title and interest of the judgment-debtor passes to the purchaser.

Effect of decree for rent against some of several joint tenants.—A decree for rent against some only of the joint-tenants cannot ordinarily be executed as a rent decree. The tenancy must be represented in its entirety before a decree can be made binding on the tenure. (25 C. W. N. 525.) Thus, it was held in *Asok Bhuiyan v. Karim Bepari* (9 C. W. N. 843) that there being no law rendering it obligatory on tenants who are not tenure-holders to get their names recorded in the landlord's *sherista* for the purpose of perfecting their titles, the sale of a holding in execution of a decree for rent obtained against the recorded tenant does not pass the interest of the tenants whose names are not registered in the landlord's *sherista*.* Ordinarily, all the tenants must be joined as parties in a rent-suit in order that the decree and sale in execution thereof may pass the entire holding and not merely the *right, title and interest* of the judgment-debtor. But under certain circumstances a decree for arrears of rent obtained against one of several joint-tenants operates as a rent-decree and may be executed under the special provisions of the B. T. Act, *e.g.* where one of a number of tenants is put forward by the rest as

rent decree and a money-decree. Illus. trate by examples. B.L. 1929(b), 1925 (b). Explain the distinction between a sale in execution of a money-decree and a sale in execution of a rent-decree. X, a tenant under the Bengal Tenancy Act, died leaving Y and Z, as heirs. Y got his name registered in the *sherista* of the landlord. The landlord sued for arrears of rent and sold the land in execution of his decree and it is purchased by A. Can Z maintain his possession against A? B.L. 1926(a), 1929 (b).

* In this case, the case of *Nital v. Hari Gobinda*, 26 Cal. 677 was distinguished because that was a case of a tenure and the tenants in that case were bound to register their names in the landlord's *sherista*.

Give illustrations in support of your answer.

B.L. 1924 (a). What do you mean by a rent decree and a money decree ? Illustrate your answer.

B.L. 1921(b). A, a tenant under the Bengal Tenancy Act died leaving B and C as heirs ; B got his name registered in the office of the landlord. The landlord sued B for arrears of rent and sold the land in execution of his decree and it was purchased by D. Can C maintain his possession as against D ? B.L. 1917(a).

their representative, he can be regarded as the sole tenant, for the purpose of a suit for arrears of rent within Chapter XIV of the B. T. Act and a decree for rent obtained against him may be executed as a rent decree under the Act. (*Chamathkarini v. Trigunanath*, 17 C. W. N. 833 ; *Nitai v. Harigobinda* 26 Cal. 677 ; *Jivlal v. Gunga Prasad*, 10 Cal. 995.) "Secs. 15, 16 and 17 provide rules as to notifications to the landlord of the succession on the death of permanent tenure-holders ; the same rules apply to raiyats at fixed rent by virtue of S. 18 of the Bengal Tenancy Act. But there are no such rules relating to occupancy raiyats ; it, therefore, often happens that a landlord being ignorant as to who the heirs of an occupancy-raiyat are brings suits for recovery of rent against some of several heirs, and the question arises, as to whether the decree obtained in such suits are *rent-decrees*. It seems that a decree obtained by a landlord against one of several heirs of an occupancy raiyat should be considered to be a rent-decree where the whole body of heirs by their acquiescence allowed one of them to represent all, or where one only got his name registered and the others did not. Thus where an occupancy raiyat died leaving several heirs and the landlord put the holding to sale in execution of a decree for rent obtained against the recorded tenant only, it was held that the entire holding passed by sale as the recorded tenant represented the holding on behalf of all the co-sharers. (*Jagattara v. Daulati Bewa*, 37 Cal. 75) Similarly, where one of several joint-tenants executed a Kabuliyat in favour of the landlord and the other tenants acquiesced in the representation of the holding by the tenant who executed the Kabuliyat, and the landlord sued him only for the rent and in execution of that rent decree attached the entire holding, and the other tenants made no attempt to get them recognised or to pay the arrears ; held that the attachment covered the entire holding unless there was fraud on the part of the landlord. (*Rejani*

Ranta v. Ujir Bibi, 7 C. W. N. 170) If all the tenants have held out one of them as their representative in their transactions with the landlord, and to represent them in the matter of the tenancy, they can not complain if a decree for rent is obtained by the landlord against the representative tenant and the entire tenancy is brought to sale in execution thereof and such co-tenants would be affected by the sale even though they were not parties to the decree. (Mitter & Mukherjee, 278.) But where a landlord being aware as to who the heirs are brings a suit against one or some of the several heirs, the decree should be considered as a *money decree*. Thus, where, upon the death of the last recorded tenant, none of his heirs had his name recorded in the landlord's office, but they held the land and went on paying the rent and obtained separate rent-receipts for some years until recently, when a rent suit was brought against two of them only and the *jama* was sold in execution of the decree, *held* that after having accepted rent from all the heirs the landlord had no right to ignore some of them and that the sale did not pass the entire *jama* but only the *right, title and interest* of the judgment-debtors. The heirs of the last recorded tenant with respect to an occupancy holding are entitled to claim recognition from the landlord, and if the latter ignoring them brings a suit for arrears of rent and in execution thereof sells the holding, the right of the former is not affected. (*Annada v. Haridas*, 4 C. W. N. 608). The same principle has been applied in the case of tenure-holders in the case of *Faijunnessa v. Ramtaran Chaudhury* (26 C. W. N. 138). There, on the death of a permanent tenure-holder his heirs did not give the notice under S. 15 B. T. Act, to the landlord; the landlord, however, chose to recognise one of the heirs as the representative of the tenancy, obtained a rent decree against him alone and in execution of that decree had the tenure sold. *Held* that the shares of the heirs who were not parties to the rent decree did not pass under the sale and only the right, title

and interest of the tenant who was the sole defendant in the rent suit passed. It is not sufficient to show that the landlord has chosen to obtain decree for rent against one out of several heirs. It has to be established that all the tenants have held out one of them as their representative in their transaction with the landlord. Failure on the part of heirs to comply with the requirements of Sec. 15 B. T. Act does not necessarily entitle the landlord to treat one of several heirs of the original tenure-holder as representative of the tenancy.

Where there is no representative tenant, a decree for rent, in order that it may be executed as a rent decree, must be obtained in a suit in which the entire body of the joint tenants are made parties defendants. The question whether one of several tenants can be regarded as a representative of the rest must depend upon the circumstances of each case, such a question being largely, if not essentially, a question of fact. (*Gagan v. Abijan*, 14 C.L. J. 180 ; *Chamatkurini v. Trigunanath*, 17 C. W. N. 833). See new Ss. 146-A and 146-B. The former declares the joint and several liability for rent of co-sharer tenants in a tenure or holding and provides under what circumstances a decree against some of the co-sharer tenants will have the effect of a decree for rent under Ch. XIV of the B. T. Act *i.e.*, will be valid against the tenure or holding. S. 146-B enables a co-sharer tenant who has not been made a party to come in the suit as a defendant. See *infra*.

Sec. 146-A provides as follows :—“(1) Notwithstanding anything contained in the Indian Contract Act, 1872, all co-sharer tenants in a tenure or holding and their successors in interest shall be liable to the landlord jointly and severally for the rent payable to such landlord on account of the tenure or holding, whether such rent has accrued during the time of their own occupation or during the time of the occupation of their predecessors in interest.

(2) Notwithstanding anything contained elsewhere in this Act or in any other law, a decree for arrears of rent of

a tenure or holding and a sale in execution of such decree shall be valid against all the co-tenants, whether they have been made parties defendant to the suit or not and against the holding in the manner provided in Chapter XIV, if the defendants to the suit represented the entire body of co-sharer tenants in the tenure or holding for the rent of which the suit was brought.

(3) The entire body of co-sharer tenants in a tenure or holding shall for the purposes of sub-section (2) be deemed to be represented by the defendants to the suit if such defendants include—

- (i) all the co-sharer tenants in the tenure or holding whose homestead are situated in the village in which the tenure or holding is situated ;
- (ii) such of the co-sharer tenants in the tenure or holding, as have, at any time during the three years previous to that for the rent of which the suit is brought, made any payment of rent for the tenure or holding ;
- (iii) such co-sharer tenants who having purchased an interest in the tenure or holding, have given notice of the purchase under sub-section (3) of section 12, or section 26E or section 26F, as the case may be, or who having succeeded to an interest by inheritance have given notice of their succession under section 15 ; and
- (iv) all other co-sharer tenants in the tenure or holding whose names are entered in the landlord's rent-roll."

S. 146-B provides as follows :—“(1) Notwithstanding anything contained in the Indian Limitation Act, 1908, any person who claims that he should have been joined as a co-sharer tenant defendant in a suit for the recovery of arrears of rent due in respect of a tenure or holding may at any time before the hearing of the suit has been commenced apply to be made a party defendant to the suit, and the Court shall consider his claim, and if it finds that he should have been so joined shall join him as a party defendant :

Provided that if any such person at any time in the course of such suit pays into Court the full amount of the claim together with such costs as the Court may direct, the suit shall be dismissed and in any such case the provisions of section 171 shall apply.

(2) The provisions of sub-sections (2) and (3) of section

146A shall, so far as may be, apply in the case of a co-sharer tenant joined as a defendant under sub-section (1) of this section."

But where one of several joint tenants does not represent the others, a question often arises as to whether a suit for arrears of rent in which all the tenants are not made parties is at all maintainable. Three cases may possibly arise in this connection, namely, (1) where all the joint tenants are person who originally took the lease or their transferees : (2) where some of the joint tenants who originally took the lease dies or die leaving heirs ; (3) where the sole original tenant or all the joint-tenants who originally took the lease dies or die leaving heirs. In case (1) [and also in case (2)] so far as the original contracting parties are concerned, any one of them may be sued for the whole rent, in as much as their liability for rent is, in the absence of a contract to the contrary, joint and several, having regard to the provisions of Sec. 43 of the Indian Contract Act.* (*Manmatha v. Abinash* 27 C. W. N. 521). In cases (2) and (3) *i.e.* where some of the heirs of one or more of the original tenants are left out, there was a diversity of judicial opinion as to whether upon the death of an original contracting party a suit could be maintained against *some* only of his heirs. In some cases, it was held that a suit for rent against some of several joint-tenants is maintainable, though the decree will be a money-decree and not a rent decree.† The contrary view was held in some other

* Sec. 43 of the Indian Contract Act provides : "Where two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any or more of such joint promisors to perform the whole of the promise."

† See *Khetra Mohan v. Prankrishna*, 3 C. W. N. 371; *Rameswar v. Jatdev*, 12 C. L. J. 591; *Jogendra v. Nogendra*, 11 C. W. N. 1026; *Girish v. Khagendra*, 16 C. W. N. 64; *Lalit Mohan v. Haran Chand*, 36 I. C. 243; *Sabashini v. Rajkrishna*, 23 C. W. N. 27 (notes); *Taramoni v. Mainuddin*, 23 C. W. N. 136 (notes). *Meajan v. Jogendra*, 48 Cal. 518; *Chamatkarini*

cases.* The matter has now been settled by the decision

v. *Trigunanath*, 17 C. W. N. 833. See also *Krisnadas v. Kalitara* (22 C. W. N. 289) and *Beradar v. Raghununda* (1920 Pat. 9) where it was held that "if a landlord desires to obtain a decree good against the land under the Bengal Tenancy Act, he must ordinarily, apart from any question of representation, implead all the co-tenants including the heirs or legal representatives of a deceased co-tenant. But for the purposes of a money decree, in the absence of any express agreement to the contrary, he is free under Sec. 43 of the Contract Act to sue any or all the tenants." In *Jogendra v. Nogendra*, 11 C. W. N. 1026 it was held that a suit for rent against some of the several joint tenants is maintainable as "joint tenants are jointly and severally liable for the rent. To hold that they are only liable each for his own share of the rent, would be directly opposed to the policy of the (Bengal Tenancy) Act as laid down in Sec. 88." In *Rameswar v. Jaidev*, 12 C. L. J. 591 it was held that a landlord may maintain a suit for rent against any number of several joint tenants. In *Khetrawohan v. Prankrisnu*, 3 C. W. N. 371 it was decided that there is no law which compels a landlord, in order that he might succeed in a suit for rent to sue all the heirs of a deceased tenure-holder when he had no notice who the heirs are. In *Lalit Mohan v. Haran chand*, 86 I. C. 243 it held that a suit against the heirs of a deceased tenant for arrears of rent which did not accrue during the life-time of the deceased is maintainable. [The case of *Kashikinkar v. Satyendra* (12 C. L. J. 642) was distinguished on the ground that the rent sued for in that case became due in the life-time of the father and some of the heirs were sued.] In *Meajan, v. Jogendra*, 63 I. C. 949 it was decided that where after the death of the original tenant, a suit is brought against some of his heirs, who were in possession of the holding and against whom a previous decree was obtained for arrears of rent accrued due during the period of the latter's occupation, the suit is not defective by reason of the non-joinder of the other heirs. In *Girish v. Khagendra*, 16 C. W. N. 64 it was held that where all tenants are not made parties in a suit for arrears of rent, the suit should not be dismissed but a money-decree would be passed. In *Taramani v. Moinuddin*, 23 C. W. N. 27 (notes) it was decided that a suit for rent is maintainable when only the heirs in possession but not all the heirs of the original tenant have been impleaded. In *Subasini v. Rajkrishna* 23 C. W. N. 27 (notes) it was held that a suit for rent is maintainable against some only of the tenant's heirs.

* See *Kashikinkar v. Satyendra* (15 C. W. N. 191), *Sheib Sahad v. Krishna mohan* (24 C. L. J. 371), *Shibkrishna v. Jagat-chandra*, (45 I. C. 732), *Burendra v. Aghor* (25 C. W. N. 526 at p. 527); *Kishori mohan v. Osi Pramanik* (48 I. C. 536); *Jogeswar v. Resho Prasad* (1 Pat. L. J. 190) and *Abinash v. Fulchand* (50 Cal 737). In *Kashi Kinkar v. Satyendra* it was held that where several person jointly inherit a tenancy any one of the heirs

of the Full Bench in *Jagan Mohan v. Brajendra* (53 Cal. 197, F. B.) where it has been held that a suit for rent is maintainable against some of the heirs or successors in interest of a deceased tenant without bringing all the heirs or succes-

cannot be made separately liable for the entire rent, for the heirs really constitute one body and cannot be treated necessarily as persons jointly and severally liable. (*Ahinsa Bibi v. Abdul Kader* 25 Mad. 26 followed). Similarly, it was held in *Shekh Sahad v. Krishna mohan*, 24 C. L. J. 371 that when a suit is brought against some of the several heirs of a tenant the suit is not maintainable. The cases of *Rameswar v. Jaidev*, 12 C. L. J. 591 and *Jagendra v. Nagendra*, 11 C. W. N. 1026 were distinguished on the ground that in those cases the contract of tenancy was entered into jointly by the several tenants, and that different consideration would arise where the joint-tenants are the representatives of a single tenant and not the co-tenants who have themselves contracted with the landlord. If lands are let out to two or more tenants their liability to payment is joint and several and consequently any of them can be sued for entire rent under Sec. 43 of the Contract Act. But where lands are let out to one tenant or more and their rights devolve upon many by operation of law (e. g. succession) their liability is joint and not joint and several as in the former case and consequently a suit for rent against some of several heirs of a tenant does not lie in as much as it is not a case of a joint contract which might be enforced against any of the joint-contractors under Sec. 43 of the Contract Act. "When the contract is with a single person as tenant and he dies, the liability of his heirs is a joint liability." (*Per N. Chatterjee J.*, in *Krishnadas v. Kalitara*, 22 C. W. N. 289). In *Sib krishna v. Jagat chandra* it was held that a landlord cannot maintain a suit for arrears of rent against one of several heirs of a deceased tenant without joining the others as defendants and that sec. 43 of the Contract Act has no applicability to such a case. In *Kisorimohan v. Osi Pramanik* it was observed that although under certain circumstances one of several joint tenants may be made liable for the whole rent yet where the claim for arrears of rent against some of the heirs of the original tenants is barred, the remaining heirs cannot be made separately liable for the entire rent. In *Abinash v. Fulchand*, 50 Cal. 737 it was held that where in a suit for rent all the heirs of the deceased tenant are not made parties the suit is not maintainable. "Assuming that one of the joint tenants is liable for the whole rent, on the death of one of such joint tenants leaving a number of heirs, no question can possibly arise as to whether the liability was joint or several, because the bundle of rights and liability which was in one such joint tenant is, by operation of law, transferred to a number of coparceners who, has been observed in *Ahinsa Bibi v. Abdul Kader* 25 Mad 26 (at p. 35). constitute in law one heir."

sors in interest on the record ; but that the decree in such a suit will not have the effect of a rent-decree under the Act. "The liability of a tenant to pay rent arises from the fact of possession of the land as a tenant where there is no express contract, and all persons in possession of land as tenants are under an implied obligation to pay the rent for the land to the landlord, whether they got into possession by right of succession or assignment. A tenant in common is entitled to possession of every part of the estate and there is privity of estate between him and the landlord in the whole of the leasehold. The law imposes a liability on a tenant in common based on privity of estate for all covenants running with the land, and as his estate is an estate in the whole of the leasehold, there is no reason why he should not be liable for the entire rent.....Thus, whether a contract is implied for payment of rent by all the tenants in common in possession of a leasehold, or whether it is held that the law imposes the liability for payment of rent by reason of privity of estate, anyone of such tenants may be sued for the entire rent due to the landlord. This may be either in accordance with the provisions of S. 43 of the Indian Contract Act which applies to express as well as implied promises or under the general law based on privity of estate. It is hardly necessary to add that a decree in such a suit will not have the effect of a decree for rent under Ch. XIV of the B. T. Act." (*Per* B. B. Ghosh, J. in 53 Cal. 197 F. B.)'

Decree for rents of two or more tenures.—Prior to Act IV of 1928 a decree for the consolidated rent of several tenures held by the same tenant did not bind any one of the tenures. (11 C. W. N. 676). Consequently, where there were several tenures held by the tenant, the landlord might institute one suit for the rent of all the tenures, but he could not put the tenures to sale under the procedure laid down in Chapter XIV of the Bengal Tenancy Act. (11 C. W. N.

Can a landlord bring one suit for the total rent of two or more separate holdings? If so, what is the effect of a decree in such a suit?
B.L. 1921(b).

497, 7 C. L. J. 96.) But under S. 144 (2) which has been newly added by Act IV of 1928, "a landlord may institute one suit in respect of the rent of more than one tenancy, if the tenancies, in respect of the rent of which the suit is brought, are held in similar right and equal status by the same tenant under him : Provided that—(i) the claim in respect of each tenancy shall be stated separately in the plaint ; (ii) separate decrees shall be made in respect of each tenancy ; (iii) the costs of the suit shall be apportioned by the court in respect of each tenancy ; and (iv) separate court-fees shall be levied on the plaint in respect of the claim on account of each tenancy."

[**Problem.**—A holds three separate jotes under a Zeminder. He sells one of those jotes to B and half of another of them to C. B and C, however, do not register their names in the *sherista* of the Zemindar. The Zemindar brings *one suit for rent against A for rent of all the three jotes* and sells them in execution of his decree. What are the rights of the purchaser ? B. L. 1918 (b). A purchaser at a sale in execution of a decree obtained in one suit for rent of several tenures or holdings can not avoid an incumbrance under S. 161, the reason being that a sale in execution of such a decree can not be held under the procedure laid down in Chapter XIV, B. T. Act. (34 Cal. 298 ; 7 C. L. J. 96) But see new S. 144 (2) enacted by Act IV of 1928, which "enables landlords, subject to necessary safeguards, to bring one suit against the same tenant on account of the arrears of rent of more than one tenancy." Prior to Act IV of 1928, a landlord could bring one suit for the total rents of two or more separate tenures or holdings, but the decree could not be executed as a rent-decree. (7 C. L. J. 96 ; 34 Cal. 298).]

Execution of rent-decree.—A rent-decree under B. T. Act. is binding against the holding or tenure and is a charge upon it but the execution of the decree must be levied

on the holding or tenure ; execution against some of the tenants limited to their right, title and interest does not affect the holding or tenure. (44 C. L. J. 167). In order that the tenure or holding may pass at the sale (i) the decree, must be a rent-decree within the meaning of the Act and (ii) the execution must also be under Ch. XIV. A landlord is not restricted, by the provisions of this Act, to executing a decree obtained by him for arrears of rent in the first instance by sale of the tenure or holding, but is at liberty to execute it in the ordinary manner against the person or other property, whether movable or immovable, of the tenant. (15 Cal. 492 ; 17 Cal. 301 ; 16 C. W. N. 31 notes ; 18 C. L. J. 29 ; 1 Pat.L.J. 138). See Notes under heading "Charge" *supra*.

Under-raiyats.—S. 65 does not apply to an under-raiyati holding. (16 C. L. J. 359. But by new S. 48-G, Sub-sec. (2), this section has been made applicable to under-raiyats with right of occupancy.

Priority between purchaser at rent-sale and mortgagee.—The landlord's charge on the land for rent is prior to the charge created by the tenant in favor of the mortgagee ; so the purchaser at a rent-sale has priority over the purchaser in execution of a mortgage-decree. (13 C. W. N. 412) In 24 C. W. N. 961, it has, however, been held that the purchaser at a rent-sale who does not annul a *subsisting** mortgage incumbrance upon the holding does not acquire priority over the purchaser at a subsequent sale in execution of a decree obtained on the mortgage by reason of the rent being a first charge upon the holding under S. 65 B.T. Act. The relative rights of a purchaser at a rent sale and the mortgagee should be determined with reference to their position at the time of that sale ; the purchaser (including

* The above principle does not, however, apply when the mortgage incumbrance is extinguished by the sale in execution of the mortgage-decree. (140 Cal. 89 P. C.)

the landlord-purchaser) acquires the statutory right to annul the mortgage within a prescribed period, and if he fails to do so, he holds the property subject to the mortgage which he is entitled to redeem. (35 C. L. J. 1 ; 6 Pat. 235).

Liability of auction-purchaser for rent—Rent is by operation of law the first charge on the tenure and a person who purchases the same at an auction-sale (in execution of a *decree other than a rent-decree*) must, in the absence of anything to the contrary, be taken to purchase it, charged with the rent which is due in respect of it at the time of its purchase. (1 C. W. N. 458) A purchaser of a tenure is, however, not personally liable for its rent which fell due before the date of purchase, although the tenure may be liable for such rent. (4 C. W. N. 590 ; 10 C. L. J. 517). But where a tenure is sold in execution of a *decree for arrears of rent*, the auction-purchaser is not liable for the arrears which became due prior to his purchase. (21 Cal. 169 ; 24 C. L. J. 34) Rent falling due during the time that a tenure belongs to any particular tenure holder is the first charge on the tenure so long as it is his and has not been sold for arrears of rent and the charge in respect of any rent falling due between the date of suit and the date of sale in satisfaction of the decree passed therein, is transferred from the tenure to its sale-proceeds and the tenure passes to the purchaser free from all liability for previous arrears. (24 C. L. J. 749 ; 21 Cal. 169 ; 18 C. W. N. 136) [But where a tenure or holding is sold in execution of a decree for rent with a notice that it is saddled with liability for arrears of rent for a period antecedent to the date of sale, the purchaser is liable for the rent of such period. (6 C. W. N. 877)] When a landlord has brought a tenure to sale in execution of a decree for arrears of rent, the purchaser becomes his tenant only from the date of the confirmation of the sale, and the arrears accruing due between the date of the sale, and the date of confirmation of sale, must be treated as

arrears of rent payable by the outgoing tenant whose interest does not cease till the sale is confirmed. [2 C. W. N. 327, notes ; 16 C. W. N. 582 ; 21 Cal. 383. *Contra* : 18 C. W. N. 136 and 26 C. W. N. 511 where it has been held that under S. 169 B. T. Act, the landlord is entitled (from the outgoing tenant) rent upto the date of sale merely and not upto confirmation of sale. The liability of the surplus sale-proceeds under the S. 169 B. T. Act is limited to arrears accrued due up to the date of sale and can not be extended to arrears due up to the date of confirmation thereof : arrears accrued due between these dates cannot be recovered from the (outgoing tenant) judgment-debtor.] See also new S. 159 (2) which provides that "whenever a tenure or holding is sold in execution of a decree for arrears of rent and the sale is confirmed, the purchase shall take effect from the *date of confirmation of the sale.*" Compare S. 65, C. P. Code 1908 under which the title in the property sold vests in the purchaser from *the date of the sale* and not from the date of the confirmation or sale. Prior to the enactment of S. 159 (2) the title of an auction-purchaser at a rent sale under the B. T. Act also vested from the date of the sale. The new S. 159 (2) has made it clear that the judgment-debtor tenant is liable for the arrears till the date of confirmation of the sale and the title as well as the liability of the auction-purchaser accrues from that date. Rent should ordinarily be regarded not as accruing from day to day but as falling due only at stated times according to the contract of the tenancy or the general law in the absence of such contract, as laid down in S. 53 B. T. Act. (21 Cal. 383 ; 33 Cal. 786 ; 28 C. W. N. 1039) Thus, where the instalment of rent falls due after the confirmation of sale, the auction-purchaser is liable to pay the instalment, though the instalment covers a period antecedent to the confirmation of sale. (21 Cal. 383) But where the whole instalment falls due prior to the date of confirmation of the sale, the auction-purchaser is not liable

- (21 Cal. 196), unless the tenure or holding is sold saddled with liability for the previous arrears. (6 C. W. N. 877.)

Separate decrees for rent by different co-sharers :—When two co-sharer landlords obtained separate decrees for rent for the same period (each making in his own suit his co-sharer a party) and the tenure was sold in satisfaction of the decree obtained by one of them, *held* that the other co-sharer landlord could not execute his decree by sale of the same tenure after it passed into the hands of the auction purchaser and all that he was entitled to was to recover the sum due to him which from being a first charge on the tenure itself had, on sale of the tenure passed, as a first charge on the surplus sale proceeds. When two persons have charges on a property of equal priority, the first who takes out execution is entitled to satisfy his decree by sale of the property and the other person loses his right to proceed against that property. (16 C. W. N. 701).

[Problem.]—A and B, two equal co-sharers, bring against the same tenant on the same date two separate suits for their respective shares of rent for the same period making each other party defendant in their respective suits. A obtained a decree in his suit on the 21st July, 1908 and B on the 17th August, 1908. B executes his decree first and puts up the tenure to sale for his claim amounting to Rs. 600, at which sale C purchases the tenure on the 15th March 1909, for Rs. 1400, and after confirmation of sale in May, 1909 takes possession through Court on the 17th August, 1909. A *then* takes out execution of his decree against the tenure to which objection is raised by C that same tenure cannot be sold again. A relies on the provisions of Sec. 65 of the B. T. Act. Decide the case. B. L. 1915 (a)].

2. Liability of other classes of tenants for arrears of rent. (1) When an arrear of rent remains due from a tenant (not being a permanent tenure-holder,

a raiyat holding at fixed rates or an occupancy raiyat, at the end of the agricultural year, the landlord may, whether he has obtained a decree for the recovery of the arrear or not and whether he is entitled by the terms of any contract to eject the tenant for arrears or not institute a suit to eject the tenant. Ejectment for arrears of rent in case of non-occupancy raiyats and under-raiyats.

(2) In a suit for ejectment for an arrear of rent a decree passed in favour of the plaintiff shall specify the amount of the arrear and of the interest (if any) due thereon, and the decree shall not be executed if that amount and the costs of the suit are paid into Court within 30 days from the date of the decree or when the Court is closed on the 30th day on the day upon which the Court re-opens. (3) The Court may for special reasons extend the period of 30 days mentioned in this Section. * (S. 66).

Note.—This section and sec. 65 taken together cover practically the remedies provided by law for the landlord to recover arrears of rent. One section is the exact corollary of the other. The right to proceed to sale in one case, in the other to eject, is dependant on the existence of the relationship of landlord and tenant at the time when the remedy provided by law is sought to be enforced. (42 Cal. 926, 939 P. C.) The section applies to (i) non-occupancy raiyats and (ii) under raiyats and the liability to ejectment under this section is independent of any contract between the parties. This is general and not restricted only to money rents. The landlord may, therefore, sue for ejectment for arrears of *rent in kind* remaining due at the end of the agricultural year. (2 Cal. 374).

The landlord may either claim arrears of rent and eject-

* By the B. T. (Amendment) Act IV of 1928, in sub-sec. (1), the words "agricultural year" have been substituted for the words "Bengali year" and the words "where that year prevails, or at the end of the month of Jeth where the Fasi or Amli year prevails" have been omitted; in sub-secs. (2) and (3) the words "thirty days" have been substituted for the words "fifteen days" and in sub-sec. (2) the word "thirtieth" has been substituted for the word "fifteenth."

ment in the same suit or if he has got a decree for arrears for rent, when he did not claim ejectment, sue only for ejectment and put in the decree for arrears of rent, if unsatisfied, as evidence.

Where a suit is brought for recovery of rent before the end of the year in which it falls due, the landlord is not entitled to eject the tenant under this section (26 Cal. 199). The applicability of the section is dependent on the condition that an arrear of rent remains due at the end of the agricultural year.

A landlord, who sues for arrears of rent for the whole of one year and a portion of the next, and also for ejectment is not entitled to a decree for the latter (14 Cal. 33). The landlord may institute a suit for ejectment under S. 66 at the time of the year mentioned in the section ; but if he does not exercise his option at once and claims rent for any portion of the year subsequent thereto he treats the tenancy as existing after the specified date and can not ask for ejectment in respect of arrears due for the year preceding that date. (16 C. W. N. 104) It is well-settled that if rent is claimed for two consecutive years, ejectment can not be decreed on the ground of forfeiture incurred at the end of the first year, because the very fact that rent is claimed for the second year, shows conclusively that the forfeiture, if any, incurred at the end of the first year, has been waived by the landlord. (27 C. L. J. 277 at p. 278) Thus, decree for ejectment under S. 66 is bad if it directs that the landlord would be entitled to eject if 4 years' rent be not paid. (47 I. C. 1006).

Under proviso (iii) to Sub-sec. (1), S. 188, newly inserted by Act IV of 1928, a cosharer landlord can bring a suit for ejectment under this section by making the other cosharer landlord's parties defendants to the suit.

3 Interest on arrears—An arrear of rent shall bear simple interest at the rate of $12\frac{1}{2}$ per cent per

annum from the expiration of that quarter of the agricultural year in which the instalment falls due to the date of payment or of the institution of the suit, whichever date is earlier. (S. 67).

What rate of interest is prescribed in the B. T. Act for arrears rent ?

B. L. '11 (2).

Note.—Under the terms of this section interest at the rate of $12\frac{1}{2}$ p. c. per annum *must* be decreed. The Court has no discretion in the matter. Only if damages are awarded under Sec. 68, should interest not be decreed.

This section must be read (since the B. T. Amendment Act IV of 1928) with sec. 178, sub-sec. (1) clause (i) which provides that “nothing in any contract between the landlord and the tenant made *before* or *after* the passing of this Act shall affect the provisions of Sec. 67 relating to interest payable on arrears of rent.” Prior to Act IV of 1928, this was old clause (h) of sub-sec. (3) which refers to contracts made *after* the passing of this Act. By Act IV of 1928, the clause has been transferred under sub-sec. (1) which refers to contracts made either *before* or *after* the passing of the Act, and numbered as Cl.(i). The effect of this change is that the provisions of S. 67 will apply to contracts whether made *before* or *after* the passing of this Act. So a landlord will not now be entitled to recover interest at a rate higher than that provided in S. 67. A condition, therefore, in a lease executed *after* the passing of the Act *i. e.* after the 14th of March, 1885, to pay interest at a rate higher than $12\frac{1}{2}$ p.c. *p.a.* would not be enforceable. But before the B. T. Amendment Act IV of 1928 contracts dated prior to the 14th of March, 1885, and reserving a higher rate than $12\frac{1}{2}$ p.c. *p.a.* or a compound interest falling due earlier than the end of the quarter was valid and enforceable. In 33 C. W. N. 133 (notes) it has been held that the new cl. (i), sub-sec. (1), sec. 178 is not retrospective in operation.

The word “rent” does not necessarily include interest, so if any sum of money be paid by a tenant to a landlord as rent and the latter receives it as such, he cannot be per-

mitted to apply that money towards any interest which might then be due. (11 C. W. N. 110).

The mere omission to claim interest for some years at the rate stipulated in the lease does not amount to waiver of the landlord's right to claim interest at such rate. (26 Cal. 160 ; 5 Cal. 102 ; 18 C.L. J. 175).

The provision of S. 67 of the Bengal Tenancy Act only applies where rent is payable quarterly. Where rent is payable monthly, interest on rent in arrears ought to be calculated monthly, even as regards arrears which became due after the Act came into force. (22 Cal. 214, 221 P. C.) So it has been held that if a lease creating a tenure provided for monthly instalments, a purchaser at a rent-sale is bound by the lease and must pay interest as each monthly kist falls due. (7 C. L. J. 24, notes) It has, however, been observed in 33 Cal. 683 at p. 687, that the whole of S. 67 is not limited in its application to cases where the rent is payable quarterly. S. 67 contains two distinct provisions, namely, one which fixes the rate of interest and the other which defines the time from which the interest is to run. It is this second provision alone which was interpreted by the Privy Council in 22 Cal. 214 by laying down that the section, so far as it defines the time from which the interest is to run, apply to cases where the rent is payable quarterly. Their Lordships did not decide by implication any question as to the effect of the other provision of the section, namely, which fixes the rate of interest. So by making interest payable otherwise than quarterly will not have the effect of making an agreement to pay more than the rate provided for in S. 67 valid. "We are not prepared to take any view, which will nullify the effect of S. 178, sub-sec. (3) cl. (h) [now sub-sec. (1) cl. (i)] and enable parties to contract themselves out of the provisions of S. 67 which limits the interest to simple interest at $12\frac{1}{2}$ p. c. p. a. by the device of making the rent payable otherwise than quarterly." (*Per* Rampini

In 1883, A executed a lease in favour of his landlord agreeing to pay rent for his holding by monthly instalments. In 1889 the holding was sold and purchased by B. The landlord sues B for rent claiming interest on monthly instalments. Is he entitled to succeed ? Discuss.
B.L. 1924(b).

and Mukherjee JJ. in 33 Cal. 683 at p. 688.) A contract between a landlord and a tenant after the passing of the Bengal Tenancy Act for payment of rent in monthly kists or instalment is valid ; but a stipulation for payment of interest on each kist or instalment as it falls due is illegal and can not be enforced in as much as the interest so calculated would exceed $12\frac{1}{2}$ p. c. p. a. provided, for by S. 67. (18 C. L. J. 175, 176 ; 33 Cal. 683.)

Under S. 67 interest runs not from the date of instalment but from the end of the quarter of the agricultural year in which a particular instalment falls due. Thus where rent is tendered after an instalment falls due before the expiration of the quarter in which the instalment falls due, the tender is a good tender and the landlord is not entitled to interest or damages (45 I. C. 532).

S. 67 read with S. 178, sub-sec. (3), cl. (h) [now sub-sec. (1) cl. (i)] applies only to contracts between landlords and tenants as to the terms upon which the latter shall hold their tenancy. It does not apply to the case of a mortgage-bond or an ordinary bond or a promissory note executed by a tenant in favour of his landlord on account of arrears of rent. Thus where a tenant executed a mortgage-bond on account of arrears of rent due to his landlord stipulating for payment of interest at more than $12\frac{1}{2}$ p. c. p. a. *held* that Ss. 67 and 178 (3) (h) [now 178 (1) (i)] do not apply in such a case. (2 Pat. L. J. 367).

When a tenant holds over, after the expiration of his lease, he does so generally on the terms of the original lease until the parties come to a fresh settlement (24 Cal. 37 at p. 39). But where the term of a lease which provided for payment of interest at a rate higher than that allowed by S. 67 expires after the passing of the Bengal Tenancy Act and the tenant holds over, it was held in a suit for arrears of rent for a period subsequent to the passing of the Act that the landlord could not recover interest at a higher rate than

that provided for in S. 67. (28 Cal. 227 ; 2 C. W. N. 525) [2 C. W. N. 303 distinguished on the ground that the lease, in that case, expired some years before the B. T. Act came into operation. In 2 C. W. N. 303, the tenant holding over was held liable to pay interest at the Kabuliyat rate which was in excess of the rate allowed by S. 67 even for a period subsequent to the passing of the Act.] The stipulation for the payment of interest upon arrears of rent is an ordinary incident of a tenancy in this country unless there is something unusual in the stipulation and as a rule it would attach to the tenancy, not only so long as it remains in the possession of the tenant who enters into the stipulation, but would continue to attach to it, notwithstanding a sale for arrears of rent. [So it has been held that if a lease creating a tenure provided for monthly instalments a purchaser at a rent sale is bound by the lease and must pay interest as each monthly kist falls due. (7 C. L. J. 24 notes)] But if there is anything unusual in the stipulation, it would not be an ordinary incident of a tenancy and would not continue to be attached to the tenancy after a sale for arrears of rent. (2 C. W. N. 194, 7 C. W. N. 203.) In execution of a decree for rent against a tenant who held under a kabuliyat dated March, 1880, the plaintiff put up the holding for sale without notice that it was being sold subject to the terms of the former tenant and the defendant purchased it in November, 1891. Subsequently a suit for rent with interest at 225 p.c. p.a., specified in the kabuliyat executed by the former tenant, was brought by the plaintiff against the defendant. *Held* that the plaintiff was not entitled to recover interest at the rate claimed, it being an exorbitant one and not an ordinary incident of tenancy. (26 Cal. 315) By the sale of an ordinary raiyati tenancy for arrears of rent, a new contract is created between the purchaser and the landlord at the date of the sale ; therefore in a case where the holding was sold after the B. T. Act came into operation, and a suit was brought by the landlord for rent with interest against the

auction-purchaser, the provisions of S. 67 read with S. 178, sub. sec. (3), cl (h) [now sub-sec. (1), cl. (1)] would apply. (*Ibid*, per Rampini, J.) In 24 Cal. 37 at pp 39-40, Macpherson and Hill JJ. observe :—"When the landlord puts up the holding to sale for its arrears, he must be taken to have put it up subject to all the ordinary incidents of such a holding. It was not an ordinary incident that interest on arrears should be payable at the very high rate claimed. On the contrary there was no such incident and if the landlord had put up the holding subject to an express condition that higher rate should be paid, the condition would not bind the purchaser in so far as it purported to create a new contract between himself and the landlord. If there was no such condition attached to the sale, the purchaser must be taken to have purchased subject to all the ordinary incidents of the holding. If there was such a condition.....the condition was, we consider, contrary to the provisions of the Act and not binding on the purchaser. An agreement by a tenant of a holding for a term, to pay interest at a certain rate, may, if made before the passing of the Act, bind him so long as he continues to hold, but it does not attach to the land, when the term has expired and the holding by the act of the landlord passes into other hands ; and if the landlord after the expiry of the term, puts up the holding to sale under the Act he puts it subject to the express provisions of the Act in connection with it." For examples :—A held certain lands under a kabuliyat for a period of 7 years from 1878 to 1884. After the term expired he held over without any further agreement. In February, 1889, the landlord obtained a decree against A for arrears of rent, and in execution of that decree he put up the holding for sale and it was purchased by B. The landlord subsequently brought a suit against the defendant B to recover arrears of rent for the years 1889 to 1892 with interest at the rate of one anna in the rupee per mensem, as specified in the Kabuliyat. Held that B was liable only for interest specified in

S. 67 of the Bengal Tenancy Act. (24 Cal. 37). But where the lease is a subsisting one and the purchaser buys, subject to the terms and conditions of the Kabuliyat executed by the former tenant before the passing of the B. T. Act he is bound to pay interest at the rate mentioned in the Kabuliyat and not at the rate mentioned in S. 67 of the Act (32 Cal. 258). In a suit for rent brought by a landlord, interest was claimed at the rate of more than 12½ p.c. p.a. on the basis of a Kabuliyat executed before the passing of the B. T. Act, the tenant being proved to have acquired the holding by private purchase. *Held* that the stipulation as to interest must be given effect to. (11 C. W. N. 215). A holding was created before the B. T. Act by a lease which stipulated that the tenant should pay interest on arrears of rent at 75 p.c. p.a. Subsequent to the passing of the Act, the Deft. acquired a portion of the holding from the tenant and obtained recognition as such from the landlord who also apportioned the rents. *Held* that the transaction could not be described as a new contract of tenancy and S. 67 B. T. Act did not apply. (13 C. W. N. 962).

An auction-purchaser of a *durputni* tenure is bound by the stipulation contained in the *durputni* lease as to the payment of interest on arrears of rent, such a stipulation, where there is nothing unusual in it, being part of the ordinary incidents of a tenancy. "We think that a stipulation for payment of interest upon arrears is an ordinary incident of a tenancy in this country, unless there is something unusual in the stipulation and that as a rule, it attaches to the tenancy so that a purchaser of the tenancy will also be bound by the stipulation. Nor can it be said that the rate of interest in this case (30 p.c. p.a.) is of itself a thing unusual in the stipulation as to take it out of the operation of the above rule.....We do not think that the landlord was under any obligation to specify the rate of interest in the proclamation of sale. There is nothing in the B. T. Act or in the C. P.

Code throwing that obligation upon him.....nor can it be said that the sale of the tenancy involves any new contract between the auction-purchaser and the landlord. At the date of the sale what is sold is the original under-tenure and it therefore carries with it all its incidents. (*Per* Banerjee and Geidt JJ. in 30 Cal. 213 at pp. 215-16) [24 Cal. 37 was distinguished on the ground that that was a case of a *raiya* holding in respect of which a contract for payment of interest is controlled by S. 178 B. T. Act and not of a permanent tenure in respect of which such a contract is not so controlled (Sec S. 179*), and in the next place, the document creating the tenancy in that case was one for a term of 7 years which had expired. 26 Cal. 315 also was distinguished, because that also was a case of a *raiya* holding and not of an under-tenure, and the stipulation for interest in that case was held to be not only of an unusual but of an unconscionable nature.]

Section 67 if controlled by Sec. 179.—Prior to the B. T. Amendment Act IV of 1928 it was held that S. 179 was not controlled by S. 67 and consequently the provisions of Sec. 67 did not apply to a permanent *mukarari* lease, so that the proprietor or holder of a permanent *mukarari* tenure might make any conditions as to interest. Now, by virtue of the amendment of S. 179 by the insertion of a new Proviso, S. 179 is controlled by S. 67, so much so that all stipulations as to payment of interest exceeding 12½ p.c. contained in a permanent *mukarari* lease is not enforceable. The above Proviso does not seem to be retrospective in operation, but applies only to contracts made after the passing of the B. T. (Amendment) Act IV of 1928, which became law on the 21st Feb. 1929. (Sen's B. T. Act, 1051. *Contra* : Mitter & Mukherjee's B. T. Act, 611).

Produce-rent.—Considering the provisions of Secs. 53 and 54 (3) it seems that no interest would be payable on

* But now see new Proviso to S. 179. See notes heading "Section 67 if controlled by S. 179" below.

arrears of produce-rents, for interest is, under Sec. 67, payable only on an arrear of rent and an arrear of rent is defined in Sec. 54 (3) as any instalment or part of an instalment of rent not duly paid at or before the time when it falls due and it is only a money-rent which is under Sec. 53 payable in instalments. (1919 Pat 242). But damages may be awarded in a suit for the money equivalent of a produce rent.

4 Court's power to award damages on rent.—(1) If, in any suit for the recovery of arrears of rent, it appears to the Court that the defendant has, without reasonable or probable cause, neglected or refused to pay the amount of rent due by him, the Court may award to the plaintiff, in addition to the amount decreed for rent and costs, such damages not exceeding 25 *per centum* on the amount of rent decreed as it think, fit.

Provided that interest shall not decreed when damages are awarded under this section.

Provided also that where damages are awarded—(i) the amount of such damages shall not be less than the interest accruing up to the date of the institution of the suit, and (ii) interest on the arrear may be awarded from the date of the institution of the suit up to the date of payment at such rate as the court directs.

Note.—It is discretionary with the Court to award damages and in exercising its discretion, it has to consider whether the defendant (tenant) has without reasonable cause neglected or refused to pay the amount of rent due by him and whether the plaintiff has instituted the suit without reasonable or probable cause. The absence of reasonable and probable cause is a matter which it is incumbent on the plaintiff to prove. A man is not to be made liable to damages merely because he may from poverty, illness or some unavoidable cause have failed to pay his rent. (1 R. J. P. 116) Where on account of dispute between the landlord and the tenant the former would not himself realise rent from the tenant in the midst of the dispute ; *held* that the landlord is not

entitled to damages. (4 Pat. L. J. 282 at p. 287). The second Proviso has been newly inserted by Act IV of 1928. The object of the amendment is thus explained in the *Notes on Clauses* :—"It is reasonable owing to the circumstances in which damages are awarded, that such damages should not be less than the interest which would otherwise be given under S. 67". The award of damages does not in any way interfere with the interest which might be allowed subsequent to the date of the suit. (21 Cal. 132) Where during the years for which rent was claimed the defendant had paid several sums to the landlord it was held that interest and not damages ought to have been allowed. (30 Cal. 1066) "Rent" includes cesses and also rents in kind. [Sec 3, Cl. (13) ; 8 Cal. 290 ; 9 C. W. N. 122 ; 4 Pat. L. J. 282].

(2) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the plaintiff has instituted the suit, without reasonable or probable cause, the Court may award to the defendant by way of damages such sum, not exceeding 25 *per centum* on the whole amount claimed* by the plaintiff, as it thinks fit. (S. 68).

No interest when damages awarded.

G - Liability for rent on change of landlord or after transfer of tenure or holding.

(Ss. 72—73.)

1. Tenant not liable to transferee of landlord's interest for rent paid to former landlord without notice of the transfer— (1) A tenant shall not, when his landlord's interest is transferred, be liable to the transferee for rent which became due after the transfer and was paid to the landlord whose interest was so transferred unless the transferee has, before the payment given notice of the transfer to the tenant.

(2) Where there is more than one tenant paying rent to the landlord whose interest is transferred, a

*The difference in the wordings of the two subsections should be noticed. The plaintiff landlord is entitled to damages only on the amount decreed ; but the defendant-tenant, on the whole amount claimed.

general notice from the transferee to the tenants published in the prescribed manner shall be a sufficient notice for the purposes of this section. (S. 72)

Note—Sec. 72 is intended for the protection of the tenants. If the landlord transfers his interest to another person and yet receives the rent which became due after the transfer, the tenant will not be liable for such rent *unless* the transferee has, before the payment, given notice of the transfer to the tenant.

This section embodies the rule that if a tenant, without notice of the transfer of the landlord's interest pays his rent to the former landlord, the transferee cannot recover from him rent so paid. But he may sue his transferor for money had and received for his use and benefit. (4 W. R. 38). It is not necessary under Sec. 72 that the payment should be made in *good faith*, it is enough if it is made before the tenant has notice of the transfer.* (Finucane). A tenant is not bound to pay rent to the transferee of the landlord unless he got notice of the transfer from the transferee and a payment made to the previous landlord not in good faith within the meaning of Sec. 50 of the T. P. Act is valid, if no notice is given by the transferee. (23 C. W. N. 88 notes). But if the tenant, after having notice of the transfer, chooses to pay his rent to the former landlord, he does so at his risk and cannot plead such payment in answer to a suit for rent by the new landlord. (25 Cal. 324).

Cl. (2)—The object of this clause is to relieve the transferee landlord from the necessity of giving notice to each tenant individually; it does not say that such a general notice shall be necessary, but says that it will be sufficient. (7 C. W. N. 454).

Rent paid in advance.—A tenant who pays rent to his landlord in advance is not, under the terms of this section, entitled to credit from the transferee for the payment. But

* Cf. Sec. 30 of the Transfer of Property Act.

where the tenant pays the rent to his landlord in good faith before it has become due and the landlord transfers his interest (and the transferee takes the property with knowledge of the payment of the rent in advance) the assignee would have no right of recovery against the tenant. (18 C. W. N. 328.)

2. Liability for rent before transfer of occupancy holding—When an occupancy-raiyat transfers his holding in whole or in part, the transferor and transferee shall be jointly and severally liable to the landlord for arrears of rent due before the transfer : Provided that the transferor shall not be liable to the landlord for such arrears of rent if the transferee has agreed to pay such arrears to the landlord and the fact has been mentioned in the instrument of transfer. (S. 73)

Note.—This section has been substituted for the former section by the B. T. Amendment Act, IV of 1928. The old section ran as follows :—

“Liability for rent after transfer of occupancy holding.—When an *occupancy raiyat transfers his holding *without consent of the landlord*, the transferor and the transferee shall be *jointly and severally* liable to the landlord for arrears of rent accruing due after the transfer, unless and until notice of the transfer is given to the landlord in the prescribed manner.”

Note.—The section as it stood before the amendment dealt with the liability for rent after transfer of occupancy holdings, and was intended to meet those cases in which transfer without the landlord's consent was valid by custom. It enacted that until notice of such transfer was duly served on the landlord, the transferor and the transferee were to be jointly and severally liable for arrears of rent accruing after the transfer. A similar provision is to be found in the T. P. Act, S. 108 Cl. (i) In view of the changes in the incidents of occupancy holdings as regards transferability and the fact that the landlord would necessarily get notice of the

transfer in every case, the provision is now altogether unnecessary. It was therefore proposed to repeal the section altogether. The Legislature, however, instead of repealing the section has embodied in it a provision dealing with liability for rent *before* transfer of occupancy holdings. The new section presumes the joint and several liability of the transferor and of the transferee for the arrears due before the transfer, unless the transferee has agreed to pay such arrears and the fact has been mentioned in the instrument of transfer. (Mitter & Mukherjee, 312-13).

4. Illegal cesses etc. (Ss. 74—75).

1. **Abwab etc. illegal**—(1) All impositions upon tenants under the denomination of *abwab*, *mathut* or other like appellations, in addition to the actual rent, shall be illegal and all stipulations and reservations for the payment of such shall be void.

(2) All impositions upon tenants of road-cess or public works cess, or of both,—(a) in excess of the net amount fixed by cl (2) of S. 41 of the Cess Act, 1880 or (b) on any scale in excess of that required by cl (3) of that section, levied in addition, to the actual rent, shall be illegal, and all stipulations and reservations for payment of any such excess contained in any contract made between a landlord and tenant on or after 13th October, 1880 shall be void. Provided that (i) nothing in this sub section shall affect the terms of a written contract registered before the commencement of the Bengal Tenancy Amendment Act, 1919, and (ii) subject to the provisions of the Indian Contract Act, 1872, no suit shall lie for the recovery of anything paid before the commencement of the B. T. Amendment Act, 1919, on account of the impositions referred to in sub-sec. (2).

(3) Nothing in this section shall be deemed to affect the terms of a permanent *mukarari* lease granted by a proprietor or holder of a permanent tenure in a permanently settled area, and registered before the commencement of the B. T. Amendment Act, 1928 (S 75).

Note.—The words “and registered before the commencement of the B. T. Amendment Act, 1928” in Sub-sec. (2) have been added by Act IV of 1928. “This change is consequential on the proposed change in S. 179 which makes a contract for *abwab* illegal in the case of permanent *mukarari* tenures as well ; but it is not proposed to interfere with existing contracts regarding such tenures.” (*Notes on Clauses*)

S. 179 is now controlled by S. 74, and the result is that all stipulations as to payment of *abwabs* contained in permanent *mukarari* leases granted and registered since the commencement of Act IV of 1928 are invalid. But prior to Act IV of 1928, Sec. 74 did not control Sec. 179 and consequently a stipulation for the payment of an *abwab* in a permanent *mukarari* lease created before the B. T. Amendment Act, 1928 was valid. (3 C. W. N 608 ; 12 C. W. N. 175) *Abwabs* were not, however, recoverable from a permanent tenure-holder under a lease created *before* the Bengal Tenancy Act came into operation ; they could not be recovered under Reg. V of 1812 and Act X of 1859, and could be recovered under the old Sec. 179 owing to the operation of Sec 2, cl. 4 of the B. T. Act, which provided that the repeal of any enactment by the Tenancy Act should not revive any right, privilege, matter or thing not in force or existence at the commencement of the Act (10 C. W. N. 527.)

Abwab.—is the plural of *bab*—a head, an item and means “items” or “miscellaneous items” *i. e.* of taxation. When the Mogul authorities desired to levy an additional sum, the usual way of accomplishing their object was not by increasing the original amount of revenue agreed for with the zemindar or farmer but by imposing a tax for some particular purpose, which tax was levied in a fixed proportion to the *jama* or revenue. The purposes or pretexts, for which these miscellaneous taxes or *abwabs* were imposed,

A proprietor grants a *mukarari* lease. May the provision as to *abwab* be contravened ? B.L. 1911(a).

What is an *abwab* ?
Is an *abwab* recoverable, from a tenant ? If so, when ?
B.L. '10 (a).
11(a), 14(b),
'18(b), '20(b).
Trace the history of

abwab from Mahomedan times and state what change was introduced in this respect by the Decennial Settlement ?

B. L. '12 (a). What is an abwab ? Can a landlord legally recover an abwab which is proved to have been paid for a great many years according to the custom of the estate of which the lands form part ?

B. L. 1919 (b). Explain and illustrate the nature of an abwab.

B. L. 1924 (b). What is an abwab ? Can abwab be recovered now under the B. T. Act under any circumstances ?

B. L. 1919 (a).

were numerous. A few will suffice as examples : *Chauth Maratta*, in order to pay the tribute of one-fourth of the *jama* levied by the Marattas ; *Abwab Faujdari* or fees for the support of the chief Police Magistrate and administration of criminal justice ; *Abwab Radhari*, for the repairs of roads, which never were repaired ; *Zar Mathaut* consisting of four items viz. presents at the *Punya* or annual settlement of the revenue, charge for *khilats* or honorary dress for the members of Government, charge for repairing the banks of the river at Murshidabad, and fees to the Nazir who commanded the escort which brought the collections to head quarters ; *A'has navisi*, fees for the Government accounts ; *Sarf-i-Sikka*, an impost to cover the loss on the exchange of coins of different mints. The Zemindars in their turn levied from the raiyats all the abwabs that they themselves had to pay generally contriving to make a profit out of the transaction and they further imposed additional *abwabs* of their own devising and for their benefit ; e. g. *abwab mehmami*, to defray the expenses of the village ; *haldari*, a tax on marriages. Any unusual occurrence, a Governor's visit, or a pretty war on some distant frontier was often made a pretext for imposing a new tax. The Zemindars and other proprietors, being themselves exempted by the Permanent Settlement from the payment of any new *abwabs* or cesses to Government, were directed, in concert with the raiyats, to revise the former cesses levied upon the latter, and to consolidate the whole with the *Asil* into one specific sum, after which they were strictly forbidden to impose any new *abwabs* upon the raiyats under any pretence whatever. Every such exaction was to be punished by a penalty equal to three times the amount imposed for the entire period of the impositions (See Ss. 54, 55, Reg. VIII of 1793 ; S. 3. Reg. V of 1812, which declare all stipulations for the payment of *arbitrary and indefinite cesses* to be null and void ; Cl. 1. S. 9. Reg. VII of 1822 ; S. 9. Reg. IX of 1825 and S. 5 Reg. XXX of 1803). The present Bengal Tenancy Act

also declares the *Abwabs*, *Mathauts*, etc. illegal and any stipulation for its payment void, and it further provides that in case of exaction by a landlord of any sum in excess of the rent or interest lawfully payable, the tenant may sue him for recovery of the same together with a penalty not exceeding Rs. 200 or when double the amount exacted exceeds Rs. 200 not exceeding double that amount. Notwithstanding these strict prohibitions, cesses have continued to be imposed down to the present day.

An *abwab* payable at the time of the Permanent Settlement unless consolidated with the rent under S. 54 of Reg. VIII of 1793, cannot be recovered (17 Cal. 131).

An *abwab* is not legally recoverable even when it is proved that by the custom of the estate of which the lands form part, it has been paid by the tenant and his ancestors for a good many years. (11 Cal. 175 F. B.) If any portion of the sum claimed from the tenants is an illegal cess which has never been consolidated with the rent, it is not recoverable even if it has been decreed in a previous suit. (17 Cal. 726). The mere fact that in a previous rent-suit the tenant did not raise the plea that an item claimed was an *abwab*, would not, in the absence of a judicial determination of the point in a previous suit, preclude him from raising the plea in the subsequent suit. (28 Cal. 17).

What is or is not an Abwab.—Whether an amount claimed by the landlord is or is not an illegal cess depends upon the construction of the contract of the parties. If upon a fair interpretation of the terms of the contract, the sum claimed can be deemed part of the actual rent, the tenant is bound by it ; if on the other hand, the sum claimed can only be regarded as an imposition in addition to the actual rent, the stipulation for its payment is void (40 Cal. 806). The question whether any particular item is or is not an *abwab* must depend upon the construction of the contract

of lease in each case, and the question in each case is whether the sum claimed is really part of the rent agreed upon to be paid as consideration for the lease. (21 C. W. N. 108, 959; 32 C. W. N. 260 P.C.). If a particular sum specified in the lease or a suit to be paid is the lawful consideration for the use and occupation of the land, that is to say, if it is really part of the rent, although not described as such, the landlord would be entitled to recover the same and the whole question in the case is whether the items claimed are really part of the rent, which was the consideration for the letting out of the land. Where it was stipulated in a lease in the year 1874, that the tenant would pay a fixed *jamma* of Rs. 4310 of which the sum of Rs. 4300 was described as *jamma*, Rs. 5 as *selami towji* and Rs. 5 as *tehwari dasuhra*, held, that the stipulation for the payment of *selami* and *tehwari* was not a stipulation or reservation for the payment of arbitrary or indefinite cesses but was a definite clause in the engagement between the parties which should be maintained and given effect to. (18 C. L. J. 83) Collection charges to be paid by a tenant are not *abwabs* and may be recovered if they are certain and definite in their nature and form part of the consideration for the lease (8 Cal. 730). When in a *putni kabuliyat* there was the following clause :-- "According to the practice prevailing in the pargana, we shall annually pay the collection charges at the rate of 2 annas per rupee along with the instalments of the annual rent," Garth, C. J. in delivering judgment said as follows : "We believe that agreements of this kind are by no means unusual, and if they are certain and definite in their nature, and form part of the consideration for the lease, there is no reason why they should not be enforced" (31 Cal. 834). "Abwabs, as I understand them, are cesses which a raiyat is compelled to pay to the Zemindar in excess of his rent. If the Zemindar demands a cess over and above the original rent, and the raiyat consents and contracts to pay it, then

this demand and the old rent form a new rent lawfully claimable under the contract." (*Per* Ainsley J. in 22 W. R. 12). Where certain sums were claimed as *tehwari* and *selami*, *held* that the same were recoverable and not *abwabs* in as much as they were specific sums which the tenants had agreed to pay to the landlord and the payment of these items, no less than the payment of the *jama* itself formed part of the consideration upon which the tenancy was created. (15 Cal. 828). But this case has been over-ruled by the case of *Radha Prosad v. Bal Kowar*, 17 Cal. 726; F. B. where it has been held that no imposition under any name whatever shall be recovered from the tenant for or in respect of the occupation of the tenure of the land beyond the sum which has been fixed for rent, whether that sum has been fixed by agreement or by judicial determination between the landlord and the tenant. Where the *jama* in a lease was mentioned as Rs. 360 and then there was an additional item under the heading of "price of presents and unpaid labour" amounting to Rs. 17-4 ans. and these two sums as amounting to Rs. 377-4 ans. were put under the heading of "Total rent" and in regard to the sum of Rs. 17-4 ans. the *Kabuliyat* provided : "Besides I shall, every year at the time of the *Saradiya Puja*, give you 4 castrated goats as presents and shall supply you labour without wages for 5 days, which if I fail to do I shall have no objection to your realising the sum of Rs. 17-4 ans. as price of the said presents and labour in addition to the amount of rent." *Held* that the sum of Rs. 17-4 was an *abwab*. (16 C. J. 225) When throughout the lease, the yearly rent was described as Rs. 252-6 ans. assessed at the rate of Rs. 3-4 ans. a *bigha* upon the area demised, and at the end of the lease in a clause entirely distinct, provision was made for delivery of four cart loads of *huck*, valued at Rs. 5 per cart load and this additional sum of Rs. 20 was not expressly or by implication made part of the rent, *held* that the claim for the value

of the huck was in the nature of an abwab. (16 C. L. J. 296). A stipulation in a kabuliyat to deliver two goats or to pay Rs. 4 as price thereof in addition to the rent stipulated to be paid in a previous paragraph of the lease was held to be an abwab (12 C. W. N. 175). In a *mukarrari* lease, executed *before* the B. T. Act came into operation, there was an agreement to pay a certain sum as rent and a certain additional sum as Zemindari *selami*, *holi*, etc., expenses which latter were found to be arbitrary and extra charges imposed on the tenants on account of work done in the Zemindari sherista and for other purposes; *held* that the additional sum was an illegal cess. (13 C. L. J. 148). When a *durputni* lease stipulated the payment of Rs. 1009 as rent and Rs. 10 annually in the event of default in supplying the landlord with a certain quantity of molasses, *held* that the sum of Rs. 10 was not a part of the rent but it was a mere personal covenant by the lessee. (7 C. W. N. 203). Where a non-transferable occupancy holding was sold and the landlord recognised the transferee as a tenant without any payment of *selami* on consideration of the transferee agreeing to pay an increase of rent, *held* that the increase of rent stipulated was not an abwab. (39 Cal. 663). Where the sum of Rs. 14 was mentioned as rent, Rs. 2 and odd as cess, and a stipulation for delivery of *bhet* (present) on Saradiya Puja day of a goat and forty pieces of sugarcane. (the value of these two items being Rs. 3 and odd), and in the kistibandi of the *patta* the whole sum of Rs. 19 and odd made up of the various items mentioned above were treated as the total rent and was payable in different instalments. *held* that the whole sum of Rs. 19 and odd was rent, and no part of it was an abwab. (25 C. W. N. 72 notes). Where in a Kabuliyat rent was fixed at a certain rate per *kani* of land and a further sum was mentioned as payable on account of improvement of *dak* and *bhet* expenses and the whole sum was put down as rent total, it was held that the

sum specified for *dak* and *bhet* expenses formed part of the rent payable for the land and did not constitute an *ahwab* within the meaning of S. 74 B. T. Act. (51 Cal. 643). Real *ahwabs* are payments or deliveries, sometimes fixed and customary and sometimes arbitrary and uncertain, which were not agreed upon between the parties as consideration for the use and occupation of the land. Where the intention of the parties as stated in the *kabuliyat* was that the total rental of a *jote* would be Rs. 106-1-6 made up of Rs. 97-8 annas in cash, two he-goats to be delivered at the time of the Puja or their price Rs. 2-8 annas and Rs. 6-1-6 as cesses, it was held that the annual rental was Rs. 100 and cesses Rs. 6-1-6 as mentioned in the *kabuliyat*. There is nothing in the law prohibiting a stipulation that two he-goats are to be delivered as part of the consideration for use and occupation of the land. (54 Cal. 799). In 32 C. W. N. 260 P. C. it has been held that stipulation to pay *embankment cess*, costs of acquittance, *dasahara* and *chaitnavami farmaish*, *tika*, *bheti*, *gurubheti*, *bachhhupi*, *jangla im navisi*, *katiari*, *dewani dastur mahal uprohiiti* in a lease totalled up into an annual *jama* along with *malguzari* and road cess are not *ahwabs*. A contract to do *begar* (gratuitous work) for a certain number of days in a year *in lieu of rent* is not illegal as being against public policy nor is it illegal for being indefinite and arbitrary under S. 3 of the Bengal Regulation of 1812. (A. I. R. 1929. Cal. 224).

2. Penalty for exaction by landlord from tenant of sum in excess of the rent payable.—

Every tenant from whom (except under any special enactment for the time being in force) any sum of money or any portion of the produce of his land is exacted by his landlord in excess of the rent or road cess or public works cess or interest lawfully payable, may, subject to the second proviso to sub-sec. (2) of S. 74, within 6 months from the date of the exaction, institute a suit to recover from the landlord, in addition to the

amount or value of what is so exacted, such sum by way of penalty as the Court thinks fit, not exceeding Rs. 200 : when double the amount or value of what is so exacted exceeds Rs. 200—not exceeding double that amount or value. (S. 75)

CHAPTER XI. —Non-accrual of occupancy and non-occupancy rights, and Record of proprietor's private lands. (Ss. 116-120).

Discuss if occupancy right can be acquired in a proprietor's private land. S.L. 1916(b). What are the rights of a tenant holding proprietor's private lands? Can he under any circumstances acquire a right of occupancy in such land? S. L. 1903. State the circumstances under which an occupancy right can or cannot be

1. **Saving as to certain lands**—Nothing in Chapter V shall confer a right of occupancy in and no thing in Chapter VI shall apply to lands acquired under the Land Acquisition Act, 1894, for the Government or for any local Authority or for a Railway Company, or lands belonging to the Government within a cantonment, *while such lands remained the property of the Government, or of any local Authority or Railway Company* or lands owned by the Government or by any local authority which are used for any public work, such as a road, canal or embankment or are required for the repair or maintenance of the same* or to a *proprietor's* private lands known as *khamar, nij, nij-jote, zirat, nij, sir, or khamat, where any such land is held under a lease for a term of years or under a lease from year to year* (S. 116).

Chapter V.—This Chapter deals with the acquisition and the incidents of occupancy right.

Chapter VI.—This Chapter deals with the rights and liabilities of non-occupancy-riayats.

* The words "or lands owned by the Government.....same" have been inserted by the B. T. Amendment Act, 1928. The object of the amendment has been thus explained in the *Notes on Clauses* :—"It was resolved at a conference of District Boards, held in 1919, that tenants of any roadside lands should not be allowed to acquire occupancy rights in them. This clause therefore provides for an extension of S. 116 to such and similar lands."

† This Chapter does not apply to a *tenure-holder's* private lands, but it applies only to a *proprietor's* private lands. But the old law (Act VIII of 1865, B. C., Sec. 6) excepted from the acquisition of occupancy right, land belonging to the proprietors of the estate or *tenure*.

Proprietor's private lands.—The object of this section is to exclude the *proprietor's* private lands from the operation of Chapters V and VI, provided the proprietor has taken the precaution indicated by the concluding words of the section, *viz.* "*where any such land is held under a lease for a term of years or from year to year.*" There is nothing *per se* in the fact of a land being *Nijjote* which prevents a cultivator from acquiring rights of occupancy in it ; it is so only where such lands have been let by the Zemindar on a lease for a term of years or year by year that the right of occupancy cannot be acquired in such lands (25 W. R. 181). The acquisition of occupancy or non-occupancy right by a tenant in an alleged *khamar* land cannot be prevented unless the landlord proves that when the holding was first created it was held under a lease for a term of years or from year to year.

The provisions of Chapters V and VI are not inapplicable to all tenancies in proprietor's private lands ; they do not apply only when it is proved that the land is held under a lease for a term of years or under a lease from year to year (5 C.L.J. 181). In such cases, it is immaterial whether the lands are held by a *ticcadar*, to whom the proprietor has let it out or by a raiyat under the *ticcadar* ; a person who is brought on the land by a lessee for a term under the proprietor, ceases to have any right in the land on the expiry of the term. Thus where *sirat* lands of a proprietor were sub-let to a tenure-holder for term of years and a raiyat held under the latter and not directly under the proprietor, held that the lands were excluded from the operation, of Chapter V so far as it conferred a right of occupancy, and also from the operation of Chapter VI. (3 C. W. N. 336, 26 Cal. 546). The case of *Binod v. Kalu* (20 Cal. 708) was thus distinguished by their Lordships, Banerjee and Rampini, J.J. :—"It was argued upon the

acquired by raiyat in holdings directly held by them under the Zemindar in the Zemindar's *nij-jote*, sir or *khamar* land within his Zemindari. B. L. 1911(b). What do you understand by *khamar* lands? A holds a piece of *khamar* land under an *ijara* lease for a term of years. He lets it out to B who actually cultivates the land for 13 years. The lease of A then terminates. The landlord under whom A held brings a suit to turn out B. Discuss the right of the parties to the suit. B.L. 1917(b). Can a raiyat acquire the right of occupancy in a proprietor's *nij-jote* land? If so, where? B.L. 1919(a).

authority of *Benod v. Kalu* that the mere fact of the title of the person who inducts a raiyat upon any land ceasing or being non-existent, would not be sufficient to show that the raiyat's title ceased or did not exist. We are of opinion that that case can have no application to a case like the present. The ground for the decision in that case was, as stated in the judgment of the learned Chief Justice, that the only right of the person who has obtained possession of the Zemindari is to the rent payable for the land and not to obtain *khas* possession of the land itself unless he can do so under the provisions of the Bengal Tenancy Act; and that ground is not applicable to *zirat* lands protected by Sec. 116, the primary character of such lands being that the proprietor is entitled to be in *khas* possession of them and no raiyat can acquire any occupancy or non-occupancy right in them."

Proprietor's.—The right to have *khamar* land belongs only to the proprietors. Tenure-holders or ijaradars have no such right. Proprietors cannot now add to the area of their *khamar* land and all land is to be presumed to be raiyati (in which occupancy rights can accrue) till the contrary is proved. Tenants of *khamar* lands have neither the occupancy rights nor non-occupancy rights. But with the exception of the provision of Chapters V and VI, the other provisions of the Act, so far as they are applicable, will apply to them.

Khamar.—"The word *khamar* refers to any parcel of land, whether cultivated or uncultivated, belonging to the Zemindar and which the Zemindar chooses to keep in his own possession. Every piece of land which the Zemindar keeps under his own special control, would be *khamar* land within the meaning of the Section." (*Per* Glover, J., in *Hurish v. Gungadhar*, 25 W. R. 181.).

Onus.—In a suit for ejectment brought against a tenant by a landlord, the *onus* is in the first place on the landlord to prove either that the land is *zirat* or any other title on.

which he claims to be entitled to eject to the tenant. If such a title is made out, it will then be for the tenant to prove his title in order to save himself from ejectment. (13 C. W. N. 661, 664).

The status of settled raiyat can be acquired in proprietor's private lands :—"It seems that a tenant may acquire the status of a settled raiyat in proprietor's private lands although he cannot acquire a right of occupancy ; for this section only says that nothing in Chapter V shall confer a *right of occupancy* in a proprietor's private lands. By occupation of land in the manner provided by Sec. 20, a raiyat becomes a settled raiyat of the village and as such acquires a right of occupancy in all land for the time being held by him as a raiyat in that village. By sec. 116 he is no doubt debarred from acquiring a *right of occupancy* in a proprietor's private land but that does not prevent him from acquiring the status of a settled raiyat and thus acquiring a right of occupancy in the other lands (if any) held by him in the village as a raiyat." (Sen's B. T. Act p. 792, New Edition).

2. Record of proprietor's private land.—(1) The Local Government may from time to time make an order directing a Revenue Officer to make a survey and record of all the lands in a specified local area which are a proprietor's private lands within the meaning of S. 116 (S. 117).

Power of Government to order survey and record of proprietor's private lands. Power of Revenue Officer to record private land on application of proprietor or tenant.

(2) In the case of any land alleged to be a proprietor's private land, on the application of the proprietor or of any tenant of the land, and on his depositing the required amount for expenses, a Revenue Officer may, subject to, and in accordance with, rules made in this behalf by the Local Government ascertain and record whether the land is or is not a proprietor's private land. (S. 118).

(3) *Procedure for recording private land* : When a Revenue officer proceeds under S. 117 or 118 the provisions of Secs, 103A, 103B, 106, 107, 108, 109 and S. 115 C shall apply. (S. 119).

Note—Sec. 119 renders it clear that the same procedure is to be adopted, whether action be taken under Sec. 117 or S. 118. (30 Cal. 239).

What are the rules for the determination of a proprietor's private land?
P. I., 1903.

3. Rules for determination of proprietor's private lands.—(1) The Revenue Officer shall record as a proprietor's private land—(a) land which is proved to have been cultivated as *khamar*, *zirat*, *sir*, *nij*, *nij-jote* or *khamat* by the proprietor himself with his own stock or by his own servants or by hired labour for 12 continuous years immediately before the passing of this Act and (b) cultivated land which is recognised by village-usage as proprietor's *khamat*, *zirat*, *sir*, *nij*, *nij-jote* or *khamat*.

(2) In determining whether any other land ought to be recorded as a proprietor's private land, the Officer shall have regard to local custom, and to the question whether the land was before the 2nd of March, 1883, specifically let as proprietor's private land, and to any other evidence that may be produced, but shall *presume* that a land is *not* a proprietor's private land until the contrary is shown.

(2-A) Notwithstanding anything contained in any agreement or compromise, or in any decree which is proved to his satisfaction to have been obtained by collusion or fraud, a Revenue Officer shall not record any land as a proprietor's private land, unless it is proved to be such by satisfactory evidence.

(3) If any question arises in a civil Court as to whether land is or is not a proprietor's private land, the Court shall have regard to the rules laid down above for the guidance of Revenue-officers (S. 120).

CHAPTER XIV.—Sale for arrears under decree (Ss. 159—177).

Under S. 65 a permanent tenure, a holding at fixed rate an occupancy holding and a holding of an under-raiyat with right of occupancy (*see* new S. 48G) are liable to sale in

execution of a decree for arrears of rent * thereof. The provisions of this Chapter deal with the law relating to such sales. They do not, however, affect any enactment relating to *putni* tenures in so far as it relates to those tenures. Putni tenure, therefore, remains saleable without decree under the special procedure laid down in the Putni Regulations.

The provisions of the Chapter do not apply to lands held by an under-raiyat without right of occupancy (16 C. L. J. 539) but it applies to the sale of a non-occupancy holding for its own arrears. (14 C. W. N. 341).

The provisions of this Chapter apply only to sale in execution of a decree for arrears of rent, provided that the suit has been brought—(a) by a sole landlord, (b) by the entire body of landlords, or (c) by one or more co-sharers in respect of his share in a tenure or holding making all the remaining co-sharers parties defendants to the suit and claiming that relief be granted to him in respect of his share of the rent against the entire tenure or holding (S. 148-A) When a co-sharer landlord, who has the right to recover his share of the rent separately, brings a suit for the share of the rent due to him alone but does not frame the suit as one under S. 148-A, the decree obtained is a mere money-decree and the tenure or holding cannot be sold in execution of it whether the other co-sharers are made parties defendants or not. (16 C. L. J. 379) On the other hand, when a co-sharer landlord brings a suit for his share of the rent by making the other co-sharers parties defendants and the suit is framed as one under S. 148-A, the decree will be a rent-decree as contemplated by this chapter. A co-sharer landlord may, however, bring a suit for the *whole* rent of the tenure or holding making his co-sharers, who refuse to join

A, B and C respectively own 12 as 2as, and 2as, of a *zemindari* and D is the *putnidar*. A brings a suit under the Bengal Tenancy Act to recover the whole rent of the tenure against D, joining B and C as co-defendants so as to enable him to bring to sale the tenure itself. Is such a suit maintainable? Would it make any difference if the suit was brought before the changes made in the

* The term "arrears" and "arrears of rent" include interest decreed under Sec. 67 or damages awarded in lieu of interest under Sec. 68, Sub-sec. (1). See S. 161 (3).

B. T. Act
in 1907 ?
B. L. 1910(b),
1912 (a).

him as plaintiffs, parties-defendants in the suit. Such a suit will be treated as one by the entire body of the landlords and the decree made in the suit will carry with it all the incidents attaching to a rent-decree (35 Cal. 331 P. C. ; 14 C. L. J. 373 ; 3 C.W. N. 386) See notes under S. 65 *ante*.

1. General powers of purchasers as to avoidance of incumbrances*—(1) Where a tenure or holding is sold in execution of a decree for arrears of rent due in respect thereof, the purchaser shall take it subject to the "protected interests" but with power to annul the "incumbrances" as defined in this chapter.

Provided as follows :—(a) a registered and notified incumbrance within the meaning of this chapter shall not be so annulled except in the case hereinafter mentioned in that behalf ; (b) the power to annul shall be exerciseable only in manner by this chapter directed.

(2) Notwithstanding anything contained in the Code of Civil Procedure, 1908, whenever a tenure or holding is sold in execution of a decree for arrears of rent and the sale is confirmed, the purchase shall take effect from the date of the confirmation of the sale (S. 159).

Note.—The old section has been renumbered as Sub-sec. (1) and Sub-sec. (2) has been newly inserted by B. T. Amendment Act, 1928 so as to make it clear that the title of the purchaser of a tenure or holding in a sale in execution of a rent-decree takes effect from the *date of the confirmation of the sale* in conformity with S. 169 (1) (c). Under S. 65 of the Civil Procedure Code, 1908 the title in the property sold vests in the purchaser from the *date of the sale* and not from the date of the confirmation of the sale. Prior to the enactment of S. 159 (2) by Act IV of 1928, the title of a purchaser at a rent-sale under the B. T. Act also

* Compare the rights of a purchaser at the *Revenue-sale* and the *Putni sale*. *Vide* Secs. 37, 52 and 54 of the Bengal Land Revenue Sales Act (XI of 1859) and Sec. 11 of the Putni Regulation (Reg. VIII of 1859). *Vide* Appendix.

vested from the date of the sale (*vide* 18 C. W. N. '136; 26 C. W. N. 511) See Notes under S. 65 *ante*. In order to determine whether an execution purchaser has acquired rights under S. 159, the test to be applied is two-fold: namely, *first*, whether a tenure (or holding) has been sold; and *secondly*, whether the decree in execution whereof the sale has taken place is a decree for arrears due in respect of that tenure (or holding): 19 C. L. J. 324. For what is or is not a decree for rent see Notes under S. 65 *ante*. For meaning of "Protected interests"—See S. 160 *infra*. and for meaning of "Incumbrance" and "Registered and notified incumbrance"—See S. 161 *infra*.

2. Protected interests—The following are "protected interests" within the meaning of this Chapter:—

(a) Any under-tenure existing from the time of the Permanent Settlement.

(b) Any under-tenure recognised by the settlement proceedings of any current temporary settlement as a tenure at a rent fixed for the period of that settlement.

(c) Any lease of land whereon dwelling-houses, manufactories or other permanent buildings have been erected, or permanent gardens, plantations, tanks, canals, places of worship, or burning or burying grounds have been made.

Note.—With this clause should be read clause 4 of Sec. 167 of this Act which provides that when a tenure or holding is sold in execution of a decree or a certificate signed under the Bengal Public Demands Recovery Act, 1913, for arrears due in respect thereof, and there is on the tenure or holding a protected interest of the kind specified in Sec. 160, clause (c), the purchaser may, if he has power under this chapter or that Act to avoid all incumbrances (see Sec. 165), sue to enhance the rent of the land which is the subject of the protected interest unless it has been held for a term

What are the rights of a purchaser at a Court sale under rent-decree? B.L. 1913(a), 1900, 1890. What are "protected interests" as contemplated by the B. T. Act? What are the privileges associated with such interest under the Act? B. L. 1910 (a). What are "protected interests" as defined in the B.T. Act? Can a purchaser at a sale in execution of a rent-decree avoid such interests? B.L. 1919 (b).

exceeding 12 years at a fixed rent equal to the rent of a good arable land.

This clause corresponds to the fourth exception to Sec. 37 of Act XI of 1859. In a case under Sec. 37, Act XI of 1859 it was *held* that "the benefit of the fourth exception must be limited to improvements effected *bonafide*, and to *permanent* buildings [a tin-shed is not a permanent building (30 Cal. 498)] erected before the revenue sale and should not be conceded to anything subsequently constructed or which appears to have been constructed merely for the purpose of defeating the rights of the auction-purchaser. Subject to this reservation, it does not matter whether the improvements have been effected by the present holder or by some previous occupier": *Azgar Ali v. Asmat Ali* (8 Cal. 110 at p. 112). Leases of lands which may not have been expressly leased for the purpose of making gardens (etc) thereon, but on which gardens (etc.) have subsequently been made are under Act XI of 1859, S. 37 (4) protected from avoidance by an auction-purchaser at a revenue sale. (12 Cal. 327) The word "plantation" is one of wide significance and would include an assemblage of growing plants of any kind that have been planted. Thus a *boroj* (betel plantation) was held to be a plantation and consequently protected. (18 C. L. J. 176) The 4th Exception to S. 37 of the Revenue Sale Law must be limited only to such portions of land as are covered by buildings, tanks etc. and cannot be extended to cover those lands included in the lease on which buildings and tanks etc. have not been constructed. (12 C. W. N. 1029.)

(d) Any right of occupancy.

A is a raiyat at fixed rate of rent under B, a tenure-holder and has been in continuous

Under-raiyat with right of occupancy—The interest of an under-raiyat having a right of occupancy in his holding is not a protected interest under cl. (d) of S. 160. See new S. 48 G (3). The interest of the under-raiyat having a right of occupancy who has erected a dwelling

house or excavated tanks etc. seems to be a protected interest under cl. (c) of S. 160 so far as the house or tanks etc. are concerned. Chapter XIV has been made applicable to under-raiyats with right of occupancy. See S. 48G, Subsec. (2), Cl. (iii).

(e) The right of a non-occupancy raiyat to hold for 5 years at a rent fixed under Chap. VI by a Court or under Chap. X by a Revenue officer ;

(f) Any right conferred on an occupancy raiyat to hold at a rent which was a fair and reasonable rent at the time the right was conferred ;

Note.—Clauses (d) and (f) read together would show that the right of occupancy is protected merely, but the amount of rent is not protected if it was originally unfair. So if the rent of an occupancy raiyat was originally unfair or unreasonable, the rent is liable to be revised and a suit may be brought for assessment of fair rent. According to the provisions of S. 27 the burden of proof is upon the landlord to prove that the rent is unfair. (Sen's B. T. Act, new 7th Ed. 953).

(ff) The right of a raiyat at fixed rates to hold at the fixed rent or rate of rent ; and

Note.—This clause has been inserted by Act IV of 1928. It has rendered obsolete those cases *e.g.* *Bhutnath v. Surendra* (13 C. W. N. 1025) where it was held that the interest of a raiyat at fixed rate is not a protected interest. A raiyat holding land to which Secs. 20 and 21 apply, at a fixed rent for more than 12 years acquires a right of occupancy and has a "protected interest" within the meaning of S. 160 (*Sarbeswar v. Bejoychand*, 49 Cal. 280). Similarly the right of an occupancy raiyat who subsequently acquires the right to hold at fixed rent continues to be a protected interest. (54 Cal. 681). See new cl. (c) to S. 18 *supra*.

(g) Any right or interest which the landlord at whose instance the tenure or holding is sold or his prede-

possession for over 12 years. C purchases the tenure and serves a notice under sec. 167 of the B. T. Act to annul the lease in favour of A. A claims his interest as a "protected interest" as he is a raiyat, though at a fixed rate and he has acquired an occupancy right. Is A liable to be ejected ? B. I., 1915(b)

cessor in title, has expressly and in writing given the tenant for the time being permission to create.* (S. 160)

Note.—*Protected interests* are always safe and no hand can be laid on them by the purchaser. Registered and notified incumbrances on a *tenure* or *holding at fixed rate* are ordinarily protected and a *tenure* or *holding at fixed rate* so incumbered will be sold at the first instance subject to the registered and notified incumbrances. †An incumbrance not registered or registered but not notified, is not protected in any case and the purchaser is entitled to annul it. There are now altogether 8 classes of protected interests. Protected interests are not affected by a sale held under the B. T. Act. So a person asserting that he has a protected interest is not a person whose interest is affected by the sale and has

* *E. G.* where the deed contained the following clause "I give you a right to alienate the land at pleasure by gift and sale and to grant *se-putni* by settlements of your own interest," it was held that a *se-putni* created was a protected interest under this clause and not liable to be annulled. (24 C. L. J. 180).

† There is a great distinction in this respect between an occupancy holding and a holding at fixed rate or a tenure. When an occupancy holding is advertised for sale it is at the very first instance put up to auction for sale with power to avoid *all* incumbrances and the purchaser may (in the manner specified in S. 167) annul any incumbrances on the holding. But where a tenure or a holding at fixed rate is advertised to sale, it is first put up to auction for sale subject to *registered and notified incumbrances*, and if the bidding reaches a sum sufficient to liquidate the amount of the decree and costs (including the costs of sale), the tenure or holding shall be sold subject to such incumbrances and the purchaser may annul (in the manner specified in Sec. 167) any incumbrances on the holding or tenure excepting those that are registered and notified, (S. 164.) But if the bidding does not reach a sum sufficient to liquidate the decretal amount with costs and if the decree-holder thereupon desires that the tenure or holding be sold with power to avoid *all* incumbrances, the sale shall be adjourned and a fresh proclamation shall be issued announcing that the tenure or holding will be put up to auction and sold with power to avoid *all* incumbrances upon a future day, not less than 15, or more than 30, days from the date of the postponement and upon that day, the tenure or holding shall be sold with power to avoid *all* incumbrances, (S. 165).

no *locus standi* to apply for setting aside the sale under O. 21, R. 90, C. P. C. (86 I. C. 575).

"With power to annul the incumbrance."—A sale purporting to be under this Chapter does not *ipso facto* cancel the incumbrances. Such incumbrances are only *voidable* and not *ipso facto void* and they have to be annulled according to the procedure laid down in Sec. 167 of this Act. (24 Cal. 746 ; 21 C. L. J. 265). The annulment of a higher interest necessarily annuls subordinate interests. A purchases a putni tenure at a sale in execution of a decree for arrears of rent free from all encumbrances. A annuls a *durputni* tenure by a notice under S. 167. The *sc-putni* tenure as well as the right of B who acquired a title by adverse possession against the *durputnidar* is necessarily annulled and no separate notice is necessary. (14 C. W. N. 352 ; 25 C. W. N. 106)

3. Meaning of "incumbrance" and "registered and notified incumbrance" :—*For the purposes of this chapter—*

(a) the term "**incumbrance**" used with reference to a tenancy, means any lien, sub-tenancy, easement or other right or interest *created by the tenant* on his tenure or holding or in limitation of his own interest therein and not being a "protected interest" as defined in S. 160.

Note.—Whatever may be the nature of the particular incumbrance, it must be the *creation of the tenant*. So a mortgage created by the operation of Sec. 171 of this Act in favour of a person who pays the decretal amount and saves a tenure or holding from sale is not an "incumbrance" within the meaning of Sec. 161 and as such cannot be annulled by a purchaser at a sale held in execution of a decree for arrears of rent under the provisions of this chapter. (*Pashupati v. Narayan*, 24 Cal. 537).

An interest not directly created by the tenant but allowed

What is an incumbrance ?
B. L. 1894, 1904, 1916(a).
What is meant by an incumbrance ?
B. L. 1926(a).
A purchases at a rent sale, and finds a trespasser in possession of the land of the defaulting tenant. The trespasser has acquired statutory title by 12 years' possession of the land. Can the purchaser eject him ? If so, how will he proceed ?
B. L. 1920(a).

to grow up by his sufferance or negligence *e.g.* an interest created by adverse possession (against the tenant) is an incumbrance and must be annulled by a notice under S. 167. (35 C. L. J. 36).

What is a
"registered
and notified
incumbrance"?
B.L. '16 (b),
184, 1905.

(b) The term "**registered and notified incumbrance**," used with reference to a tenure or holding sold or liable to sale in execution of a decree for an arrear of rent due in respect thereof, means an incumbrance by a registered instrument, of which a copy has, not less than 3 months before the accrual of the arrear, been served on the landlord.

(c) The terms 'arrears' and 'arrears of rent' shall be deemed to include interest decreed under S. 67 or damages awarded in lieu of interest under sub-sec (1) of S. 68 (S. 161).

Notification of incumbrance to landlord.—Every officer who has, whether before or after the passing of this Act, registered an instrument executed by a tenant of a tenure or holding, and creating an incumbrance on the tenure or holding, shall, at the request of the tenant or of the person in whose favour the incumbrance is created, and on payment by him of the fixed fee, notify the incumbrance to the landlord by causing a copy of the instrument to be served on him in the prescribed manner. (S. 176.)

Registration of instruments executed before the passing of the Act.—Notwithstanding anything contained in part IV of the Indian Registration Act, 1877, an instrument creating an incumbrance upon any tenure or holding which has been executed before the commencement of this Act and is not required by Sec. 17 of the said Registration Act to be registered, shall be accepted for registration under that Act if it is presented for that purpose to the proper officer within one year from the commencement of this Act. (S. 175).

Power to create incumbrances not extended.—Nothing contained in this Chapter shall be deemed to enable

a person to create an incumbrance which he could not otherwise lawfully create. (S. 177.)

4 Application for sale of tenure or holding.

—When a decree has been passed for an arrear of rent due for a tenure of holding and the decree-holder applies under Rule 11 (2) of Order XXI C. P. C. for the attachment and sale of the tenure or holding, he shall produce a statement showing the pargana, estate and village in which the land comprised in the tenure or holding is situate the yearly rent payable for the same and the total amount recoverable under the decree * (S. 162).

Give a brief summary of the procedure laid down by Act VIII of 1885 to bring to sale a tenure or a holding and what are the rights of a purchaser at such a sale ? B. L. 1908.

5. Combined order of attachment and proclamation to be issued

—(1) Notwithstanding anything contained in the Civil Procedure Code, 1908, when the decree-holder makes the application mentioned in S. 162 the Court, if it admits the application under rule 17 of order 21, C. P. C. and orders execution of the decree as applied for, shall issue a combined order of attachment and proclamation in the prescribed form. †

(2) The proclamation shall in addition to stating and specifying the particulars mentioned in Rule 60 of Order 21 C. P. C., announce (a) *in the case of a tenure or a holding of a raiyat at fixed rates*—that the tenure or

* “Every person applying under Sec. 162 of the B. T. Act, for the simultaneous attachment and sale of a tenure or a holding of a raiyat at fixed rates or applying only for the sale of such tenure or holding already under attachment, shall in such application specify the registered and notified incumbrances subject to which the tenure or holding is to be sold. Such specification shall be verified in the manner prescribed by the C. P. Code for the verification of claims by the holder of the decree in execution of which the tenure or holding is to be sold or by some other person (approved of by the Court) if the Court be satisfied that he is acquainted with the facts mentioned in it.”—High Court’s General Rules and Circular Order, p. 31, Chap. 1, Rule 26 (c).

† But when one or more co-sharer landlords having obtained a decree in a suit framed under S. 148-A, applies or apply for the execution of the decree by the sale of the tenure or holding, the Court, shall before proceeding to sell the tenure or holding, give notice of the application for execution to other co-sharers. [S. 148-A (7)].

holding will first be put up to auction subject to the *registered and notified incumbrances*, and will be sold subject to those incumbrances if the sum bid is sufficient to liquidate the amount of the decree and costs, and that otherwise it will, if the decree-holder so desire, be sold on a subsequent day, of which due notice will be given, with power to annul *all* incumbrances : and (b) *in the case of an occupancy holding* not held at fixed rates—that the holding will be sold with power to annul *all* incumbrances.*

(3) Notwithstanding anything contained in sub-rules (1) and (2) of Rule 67 of Order XXI C. P. Code, 1908, the proclamation shall be published in the following manner—

- (a) by beat of drum at some place on or adjacent to the land comprised in the tenure or holding ordered to be sold and by fixing up a copy thereof in a conspicuous place on such land,
- (b) by affixing a copy thereof in a conspicuous place at the court-house of the issuing Court,
- (c) by sending in the prescribed form by registered post to the judgment debtor a concise statement of the order of attachment and proclamation at the time of the issue of the proclamation, and
- (d) in such other manner as may be prescribed :

Note.—Both Sub-secs. (1) and (3) have been re-drafted. The amendment is thus explained in the Notes on Clauses :—
“The use of a single form for the order of attachment and the proclamation of sale of property is proposed in order to simplify the procedure for the execution of rent-decrees. It is also proposed, in lieu of the present law, which prescribes a large number of methods of publication of this notice, to insert in S 163 three essential methods of advertising for sale.”

* The words “not held at fixed rates” have been newly added by Act IV 1928 in order that the holding of *raiyats* at a fixed rate who have acquired occupancy-right might still come within cl. (a) and not within cl. (b), now that *raiyats* at fixed rates may acquire occupancy rights under the law. *Vide* Ss. 18 (1) (c) and 18 (2) *ante*.

Where a rent-decree is obtained in a suit framed as a rent-suit under the provisions of S. 148-A, B. T. Act and the decree-holder takes every step necessary to be taken under the Act to execute the decree as a rent-decree the mere fact that the orders of attachment and sale were not issued simultaneously as required by S. 163 is not a ground for holding that the sale was not a rent-sale. (57 I. C. 492 ; 107 I. C. 821).

(4) Notwithstanding anything contained in Rule 68 of Order XXI, C. P. C., the sale shall not, without the consent in writing of the judgment-debtor, take place until the expiration of at least 30 days, calculated from the date on which the copy of the proclamation has been fixed up on the land comprised in the tenure or holding ordered to be sold. (S. 163).

Note.—The attachment may be withdrawn if in the meantime the amount of the decree including costs is paid into Court by the judgment-debtor or any person having in the tenure or holding any interest *voidable* on the sale or if the decree-holder makes an application for the release of the tenure or holding on the ground that the decree has been satisfied out of Court. (S. 170).

6. Sale of tenure or holding subject to registered and notified incumbrances, and effect thereof.—When a *tenure or holding at fixed rates* has been advertised for sale under S. 163 it shall be put up to auction subject to registered and notified incumbrances ; and, if the bidding reaches a sum sufficient to liquidate the amount of the decree and costs (including the costs of sale), the tenure or holding shall be sold subject to such incumbrances

Note.—The object of the provision that the tenure or holding is in the first instance to be put up to sale subject only to registered and notified incumbrances is to prevent sham incumbrances being fraudulently set up after the sale.

(2) The purchaser at a sale under this section may, in manner provided by Sec. 167, and not otherwise,

annul any incumbrance upon the tenure or holding not being a registered and notified incumbrance (S. 164).

A Zemindar brings a suit for arrears of rent against a raiyat at fixed rate and in execution of his decree sells the holding at the first sale and realises less than the amount of the decree. What are the rights of the purchaser? Give reasons for your answer.
B. L., '13 (b).

Effect of a sale at a price below the decretal amount.—Where the bidding for a tenure put up to auction under Sec. 164 did not reach the decretal amount, and the property was sold notwithstanding, without any fresh proclamation of sale under Sec. 165, it was held that as the sale could not, in the circumstances, be under Sec. 164, "it was not a sale under the B. T. Act and did not operate to transfer more than the *right, title and interest* of the judgment-debtor. The special and stringent provision of the B. T. A. relating to sales is part of a public policy intended for the benefit of all parties concerned. If the landlord wants special results to follow from it under the Act, he must proceed strictly in accordance with its provisions (*Banbehari v. Kheta Pal*, 16 C. W. N. 259) But see *Mahendra v. Lalit* (18 C. W. N. 64 notes) and *Nawab Sir Salimulla v. Rahemuddin* (20 C. W. N. 156) where the contrary view has been taken. Where a tenure was sold in execution of a decree for rent on the first day fixed [without the fresh proclamation provided for by the second part of Sub-sec. (1) to Sec. 165] for Rs. 26 only whereas the amount of the decree was Rs. 291, the lower appellate Court held that the purchaser acquired only the rights of a purchaser under the C. P. C.; it was held in second appeal by Teunon, J. that the lower appellate Court had overlooked the provisions of Secs. 159, 161 and 184 (2) under which the purchaser was authorised to annul any incumbrance other than a registered and notified incumbrance: (*Mahendra v. Lalit*.) Where a tenure is notified for sale subject to registered and notified incumbrances, the sale which takes place operates as one under Sec. (1), even though the amount for which it is sold does not reach a sum sufficient to liquidate the amount of the decree and costs. (*Nawab Sir Salimulla v. Rahemuddin*.) "The intention of the Legislature, as can be gathered

from Ss. 163-165, is to entitle the decree-holder, if he so desires, to proceed under S. 165 in the event of the sale on the first notification not realising a sum sufficient to liquidate the amount of the decree and costs. It is not obligatory upon him, however, in this contingency, to avail himself of the provisions of S. 165; he may nevertheless be content with the sale under S. 164; and if the sale is held under that section, the result described therein follows, namely, the purchaser becomes entitled to annul all incumbrances other than registered and notified incumbrances, provided he follows the procedure prescribed in S. 167. The consequence of the sale does not depend upon the amount of the bid offered by the successful purchaser; it is independant of the value of the bid. It is obvious that S. 175 was enacted solely for the benefit of the decree-holder; if the bid is not sufficient to satisfy his decree and costs, it entitles him to have the property sold, with power to annul all incumbrances; but it is not obligatory on him to adopt this extreme measure, and he is not in peril if he decides not to pursue the special remedy." (*Ibid*)

7. Sale of tenure or holding with power to avoid all incumbrances and effect thereof—(1)

If the bidding for a tenure or a holding at fixed rate put up to auction under S. 164 does not reach a sum sufficient to liquidate the amount of the decree and costs as aforesaid, and if the decree-holder thereupon desire that the tenure or holding be sold with power to avoid all incumbrances, the officer holding the sale shall adjourn the sale and make a fresh proclamation in accordance with the procedure provided in sub-sec. (3) of S. 163, announcing that the tenure or holding will be put up to auction and sold with power to avoid all incumbrances upon a future day specified therein, not less than 15 or more than 30 days from the date of the postponement; and upon that day the tenure or holding shall be put up to auction and sold with power to avoid *all* incumbrances.

(2) The purchaser at a sale under this section may, in manner provided by Sec 167, and not otherwise, annul any incumbrance on the tennre or holding. (S. 165)

Note.—The purchaser contemplated is a purchaser independently of the incumbrancer and when the incumbrancer himself purchases the property incumbranced to him, in execution of a decree for arrears of rent, it is not necessary for him to give notice of annulment of his incumbrance under S. 167. (28 Cal. 12 ; 8 C. W. N. 832) *Contra* : 4 C. W. N. 264 where it has been held that where the purchaser and the incumbrancer is one and the same person, the incumbrance must be annulled in the way as required by S. 167.

8. Sale of occupancy holding with power to avoid all incumbrance, and effect thereof—(1) When an *occupancy holding* not held at fixed rate* has been advertised for sale under S. 63, shall be put up to auction and sold with power to avoid *all* incumbrances.

(2) The purchaser at a sale under this section may, in manner provided by S. 167, and not otherwise, annul any incumbrance on the holding. (S. 166).

9. Power to direct that occupancy-holdings be dealt with under Ss. 159-167 as tenures—(1) The Local Government may, by notification in the Official Gazette, direct that occupancy holdings or any specified class of occupancy-holdings in any local area put up for sale in execution of a decree for an arrear of rent due on them shall, before being put up with power to avoid all incumbrances, be put up to subject to registered and notified incumbrances, and may by like notification rescind any such direction.

(2) When any such direction remains in force in respect of any local area, occupancy-holdings, or as the case may be, occupancy-holdings of the specified class,

* The words "not held at fixed rate" have been inserted by Act IV of 1928 : The amendment is "consequential upon the proposal in Cl. 14 (of the R. T. Amendment Bill) to allow a raiyat at fixed rates to acquire the status of a settled raiyat." (Notes on Clauses).

in that local area, shall, for the purpose of sale under Ss. 159-167 of this Chapter, be treated in all respects as if they were tenures. (S. 168).

Note.—No notification has yet been published by the Local Government under this section.

10. Procedure for annulling incumbrances under Ss. 164-166—(1) A purchaser having power to annul an incumbrance under Ss. 164-166 and under the Bengal Public Demands Recovery Act and desiring to annul the same may within one year from the date of the confirmation of the sale or the date on which he first has notice of the incumbrance, whichever is later, present to the Court which passed the decree or the revenue-officer who made the order, as the case may be, for sale of the property, an application in writing, requesting him to serve on the incumbrancer a notice declaring that the incumbrance is annulled.

When and by what procedure can a purchaser of a tenure sold for its arrears of rent avoid incumbrances? B. L. 1895, 1904, 1905, '12(a), '16(b).

(2) Every such application must be accompanied by such fee for the service of the notice as the Board of Revenue may fix in this behalf.

Explain what is meant by an incumbrance? How can an incumbrance be annulled? B. L., 1921, (suppl.) ; 1926(a).

(3) When an application for service of a notice is made in the manner provided by this section, the Court or Revenue-officer, as the case may be, shall cause the notice to be served in compliance therewith, and the incumbrance shall be deemed to be annulled from the date on which it is so served.

Note.—The provisions of this section do not apply unless a sale is held under this chapter. (16 C. L. J. 539) The mode provided by this section is the only mode in which purchasers at rent sales may annul incumbrances. (22 Cal. 364) Service of notice under this section has the effect of annulling an incumbrance ; it is not necessary for the purchaser to bring a declaratory suit to have it declared that the incumbrance is annulled. (25 Cal. 551) Until the notice has been properly served under this section upon the incumbrancer, the incumbrance subsists. It is obligatory on the purchaser to show that the notice has been served

in the prescribed manner : The entries in the order-sheet that notice has been served is not sufficient proof of service. (22 C.W.N. 788 ; 7 C. L.J. 262 ; 85 J.C. 790) Notices under this section are to be served in the manner prescribed for the service of summons in Order 5 of the C. P. Code, 1908 and the procedure laid down therein must be strictly followed. (33 C. W. N. 117 ; 18 C. W. N. 259 P. C.) A person who has purchased property in *benami* in the name of another person is entitled to give notice under this section ; the word "purchaser" in this section does not necessarily mean a certificated purchaser at an execution sale. (55 Cal. 1070) *Contra* : 21 C. E. J. 65, where it has been held that a *benamdar* in whose name a sale certificate is made out is the proper person to give a notice under this section But a purchaser who is a *benamdar* of one of the judgment-debtors cannot annul an incumbrance under this section (21 C.W.N. 342) The word "purchaser" includes an assignee including a lessee from the purchaser. A purchaser at a sale held in execution of a decree for arrears of rent is not competent to annul under S. 167 an incumbrance upon the property without annulling at the same time a superior incumbrance directly subordinate to the interest purchased. (14 C. W. N. 352) The annulment of a higher interest necessarily annuls the subordinate interests. Thus, when the purchaser of a putni tenure at a sale for arrears of rent annuls a durputni tenure, a sepatni interest and also the right acquired by a third person against the durpatnidar by adverse possession are necessarily annulled and no separate notice is required to annul the same. (*Ibid* ; 25 C. W. N. 106)

(4) **Special provisions for protected interests.**

—When a tenure or holding is sold in execution of a decree or a certificate signed under the Public Demand Recovery Act, 1,13 for arrears due in respect thereof, and there is, on the tenure or holding a protected interest

of the kind specified of Sec. 160 clause (c)*, the purchaser may, if he has power under this Chapter or that Act to avoid all incumbrances, sue to enhance the rent of the land which is the subject of the protected interest. On proof that the land is held at a rent which was not, at the time the lease was granted, a fair rent, the Court may enhance the rent to such amount as appears to be fair and equitable. This sub-section shall not apply to land held for a term exceeding 12 years at a fixed rent equal to the rent of good arable land. (167).

Note.—Clause (c) of Sec. 160 protects not only leases granted for building or manufacturing purposes at a fair rate of rent, but also leases of land on which buildings etc. have been erected, perhaps without the consent of the landlord and reserving it might be, only a nominal rent. It thus gives a tenure-holder the power of creating leases in favour of his relatives and dependants which might absorb the whole profits of the tenure and then of putting the tenure up to sale for the purpose of entrapping unwary purchasers. To guard against this danger the above provision has been made.

11. Rules for disposal of the sale proceeds—

(1) In disposing of the proceeds of a sale under this chapter other than a sale in execution of a decree in a suit instituted under Sub-sec. (1) of S. 148A, the following rules, (instead of those contained in Sec 73 C P. C.) shall be observed, that is to say—

(a) there shall, first be paid to the decree-holder the costs incurred by him in bringing the tenure or holding to sale ;

(b) there shall, in the next place, be paid to the decree holder, the amount due to him under the decree in execution of which the sale was made ;

* “Any lease of land whereon dwelling houses, manufactories or other permanent buildings have been erected or permanent gardens, plantations, tanks, canals, places of worship or burning or burying grounds have been made.”

(c) if there remains a balance after these sums have been paid, there shall be paid to the decree-holder therefrom the costs of the application under this section and any rent which may have fallen due to him in respect of the tenure or holding between the institution of the suit and the date of the confirmation of the sale ;

(d) the balance (if any) remaining after the payment of the rent mentioned in clause (c) shall, upon the expiration of 2 months from the confirmation of the sale, be paid to the judgment-debtor upon his application, unless the Court for reasons to be recorded in writing otherwise directs.

(2) If the judgment debtor disputes the decreeholder's right to receive any sum on account of rent under clause (c), the Court shall determine the dispute and the determination shall have the force of a decree. (S. 16)

Note.—Under cl. (c) to Sub-sec. (1) of S. 169 of the B. T. Act, the decree-holder landlord is entitled to have the surplus sale-proceeds paid to him in discharge of arrears of rent due from the date of the institution of the suit to the confirmation of the sale, even though on the date of his application for such payment, a suit to recover those arrears would be time-barred. Art. 2 of Sch. III of the B. T. Act provides for suits and not for application of this kind. (21 C. L. J. 535) Under sub-sec. (2), the tenant can, however, dispute the decree-holder's right to recover any sum on account of rent under Sub-sec. (1), cl. (c) on the ground of payment or satisfaction in any other way. (*Ibid*) Prior to the insertion of sub-sec. (2) to S. 159, it was held that under S. 169 the landlord was entitled to recover rent up to the date of the sale merely and not up to confirmation of sale. (18 C. W. N. 136 ; 23 C. W. N. 511)

Rent in cl. (c) includes interest. (26 C. W. N. 511 ; 22 C. W. N. 323) *Contra* : 12 C. W. N. CXLIV.

Disposal of proceeds of sale in execution of decree in suit under S. 148-A.—(i) In disposing of the proceeds of the sale in execution of the decree in a suit instituted under sub-sec. (1) of S. 148-A the following rules,

instead of those contained in 73 of the Code of Civil Procedure, 1908, shall be observed,—

- (a) there shall first be paid to the decree-holders the costs incurred by them in bringing the tenure or holding to sale ;
- (b) there shall in the next place be paid to the decree-holders the amount due to them under the decree in execution of which the sale was made ;
- (c) if there remains a balance after these sums have been paid, there shall be paid herefrom to the decree-holders and to any defendant landlords, who have not joined as plaintiffs, but have made application in this behalf within one month from the date of the confirmation of the sale, any rent which may have fallen due to them in respect of the tenure or holding between the institution of the suit and the date of the confirmation of the sale, in proportion to their respective shares in the tenure or holding ;
Provided that the Court shall issue a notice to the judgment-debtor or his pleader, if any, before ordering any such payment ;
- (d) the balance (if any) remaining after the payment of the rent mentioned in clause (c) shall, upon the expiration of two months from the confirmation of the sale, be paid to the judgment-debtor on his application unless the Court for reasons to be recorded in writing otherwise directs.

(ii) If the judgment-debtor disputes the right of the decree-holder or of the co-sharer landlord who has been made a party defendant to receive any sum on account of rent under clause (c), the court shall determine the dispute and the determination shall have the force of a decree. [S. 148-A, Sub-sec. (8)].

12. Who may bid at the sale ? (1) Notwithstanding anything contained in Rule 72, Order 21, C. P. C. the holder of a decree in execution of which a tenure or holding is sold under this Chapter may, without the permission of the Court, bid for or purchase the tenure or holding.

Decree-holder may bid at sale ; judgment-debtor may not.

(2) The judgment-debtor shall not bid for or purchase a tenure or holding so sold.

(3) When judgment-debtor purchases by himself or through another person, a tenure or holding so sold,

the Court may, if it thinks fit, on the application of the decree-holder or any other person interested in the sale, by order set aside the sale and the costs of the application and order that any deficiency of price which may happen on the re-sale, and all expenses attending it shall be paid by the judgment-debtor (S 173.)

Rule 72, Order, 21 C. P. C.—declares that “No holder of a decree in execution of which property is sold shall without the express permission of the Court, bid for or purchase the property.” Under sub-sec. (1) of Sec. 173, B. T. A. the holder of a rent-decree in execution of which a tenure or holding is sold, may bid for or purchase the property without such permission. But under sub-sec. (2) the judgment-debtor is debarred from either bidding for or purchasing the property and if he does so, he renders himself liable to the penalty provided for in Sec. 185, I. P. C.

Sub-Sec (3).—When the judgment-debtor purchases the property either by himself or through another (i. e. *benami*), the sale may be set aside on the application of the decree-holder or any other person interested in it. The sale is *not absolutely void*, but only *voidable*. (71 I C. 769). The section leaves it to the discretion of the Court to set it aside or not as it thinks fit. The proper Court to determine whether the sale should stand or fall is the Court that held the sale. (21 Cal. 554).

How to stay sale,

A tenure or holding has been put up to sale at the instance of the landlord in execution of the decree for rent against the tenant.

13. Tenure or holding to be released from attachment only on payment into Court of amount of decree with costs or on confession of satisfaction by decree holder.—When an order for the sale of a tenure or holding in execution of a decree for arrears of rent due thereon has been made, the tenure or holding shall be released from attachment, if before it is knocked down to the auction purchaser the amount of the decree, including the costs decreed, together with the costs incurred in order to the sale, is paid into Court, or the decree holder makes an application for the release of the tenure or holding on the

ground that the decree has been satisfied out of Court.
[S. 170 (2)]

(2) Rules 58 to 63 (both inclusive) of Order XXI, C. P. Code, 190 shall not apply to a tenure or holding attached in execution of a decree for arrears of rent due thereon. [Sec. 170 (1)]

Note.—Rules 58-63, Order 21 C. P. C. relate to claims to attached property and objections to the attachment thereof and their disposal. From the provisions of Sec. 170 (1) it follows that no claims to tenures or holdings attached in execution of decrees under the B. T. Act can now be enquired into. When in execution of a decree for arrears of rent, the defaulting tenure is attached, no claim under R. 58, O. 21, C. P. C. is maintainable, whether the claim is to the tenure or adverse to the tenure (*Mokbul Ahmed v. Rakhal Das Hastr*, 4 C. W. N. 732). See also the Full Bench case of *Amrit Lal v. Nemai Chand*, 5 C. W. N. 474. An attachment of a tenure or holding in execution of a decree obtained by a fractional co-sharer for arrears of rent of his separate share is not such an attachment as is contemplated by Sec. 170 of the Bengal Tenancy Act. A sale in execution of a decree obtained by a co-sharer landlord for his share of the rent (the suit not being framed under S. 148-A) does not carry with it the special incidents attaching to a sale under the B. T. Act; it, therefore, seems that a claim may be preferred to a tenure attached in execution of a decree for arrears of rent obtained by a co-sharer landlord. (36 Cal. 765.) But where a decree for the entire rent has been obtained by one of several co-sharers by making the others parties defendants and is executed by him alone and the defaulting tenure is attached, no claim by a third person under Rule 58, Order XXI C. P. C. is maintainable. No claim can be preferred to a tenure attached in execution of a decree for arrears of rent where the plaintiff was the landlord at the date of the suit and also at the date of the

What persons have a right to save the tenure or holding from sale and what steps can they take for that end under B. T. Act? What remedy is given to persons whose interests are at stake at an impending sale under Chap. XIV of the B. T. Act? Is the remedy exclusive, concurrent, alternative or consecutive? B. L. 15 (a). When a tenure is advertised for sale in execution of a decree for arrears of rent who are entitled to prevent the sale taking place by deposit of the decretal sum? B. L. 1924 (a). "When a tenure or holding is advertised for sale for an arrear of rent due thereon, any person having an interest

therein voidable upon the sale may pay into court the amount requisite to prevent the sale."

Explain this statement and give illustrations. What is the meaning of the words "voidable upon the sale"?

B.L. 1918(h).

decree as such a decree may be executed as a rent-decree. (*Khetra Pal v. Kritarthamoyee*, 33 Cal. 566 F. B.)

[**Problem.**—A obtained a decree for arrears of rent in respect of a tenure against B. Subsequently he sold his landlord's interest to C and then applied for execution of the rent-decree and the defaulting tenure was attached. Thereupon D preferred a claim to the tenure under the Civil Procedure Code on the ground (a) that A had no right to bring it to sale; and (b) that B also had no interest and he was in possession thereof. Discuss the question (1) whether the claim is maintainable and (2) whether A is entitled to bring the tenure to sale in execution of his rent-decree in spite of his having ceased to be the landlord at the time. B. L. 1911 (a) See above and notes under Sec. 65.]

(3) **Who can make deposit under this section?**—The judgment debtor, or any person whose interests are affected by the sale, may pay money into Court under this section. [S. 170 (3)].

(4) The withdrawal of the amount deposited under this section or S. 174 by the decree-holder landlord shall not operate as an admission of the transferability of the tenure or holding sold in execution of the decree. [S. 170 (4)]

"Any person.....sale."—The words "whose interests are affected by the sale" have been substituted by Act IV of 1928 for the words "having in the tenure or holding any interest voidable on the sale" occurring in the old section. There was at first a conflict of judicial opinion as to the meaning of the words "interest voidable on the sale." The conflict was ultimately set at rest by the F. B. decision of the Calcutta High Court in 54 Cal. 15 and the special Bench decision of the Patna High Court in 2 Pat. L. J. 457 where it was *held* that the words "interest voidable on the sale" meant an "incumbrance" as defined as by S. 161. Thus under the old law it was only the incumbrancers who were entitled to make a deposit under this section. Under the amended

section, the right of deposit to prevent sale has been extended to persons whose interests are affected by the sale and not merely to persons whose interests are voidable upon the sale. The expressions "persons whose interests are affected by the sale" is not limited to persons whose proprietary or possessory title is affected by the sale and includes persons whose pecuniary interest is affected by the sale. (51 Cal. 495).

A mortgagee making payments to save the mortgaged property from being sold in execution of a rent-decree has an additional lien on the property for the sums so paid by him (31 Cal. 975). See also 30 Cal. 794.

Procedure :—On application by the judgment-debtor to deposit money under this section notice should be given to the decree-holder ; but if the application is by a stranger, notice should be given to both the judgment-debtor and the decree-holder and his right to deposit, if contested, must be adjudicated. (18 C. L. J. 142 ; 17 C. W. N. 602).

14 Rights of person making deposit under Sec. 170 :—(1) When any person whose interests are affected by the sale of a tenure or holding advertised for sale under this chapter, or in execution of a certificate for arrears of rent due in respect thereof signed under the Public Demands Recovery Act, 1913, pays into Court the amount requisite to prevent the sale,—

(a) the amount so paid by him shall be deemed to be a debt bearing interest at 12 p c. per annum and secured by a mortgage of the tenure or holding to him ;

(b) his mortgage shall take priority over every other charge on the tenure or holding other than a charge for arrear of rent and

(c) he shall be entitled to possession of the tenure or holding as mortgagee of the tenant, and to retain possession of it as such until the debt, with the interest due thereon, has been discharged.

(2) Nothing in this section shall, however, affect any other remedy to which any such person should be entitled. (S. 171).

Note.—The present section gives to every person who has in the tenure an interest which would be affected by the sale, a lien upon the tenure in case of any payment made to save the tenure from sale. The tenure becomes mortgaged by operation of law and the statutory mortgage takes priority over every other charge save the charge for arrears of rent which is created by sec. 65, B. T. A. Such a mortgage is not an incumbrance under sec. 161, because it is not created by the tenant but comes into being by the operation of law and independently of the tenant and cannot be annulled by a purchaser at a sale held under the provisions of this Chapter (24 Cal. 537). The mortgage extends over the *whole* tenure in respect of which the payment is made and is not apportioned according to the interests of the tenure-holders if there are more than one (14 C. L. J. 134). A co-sharer tenant by paying up the amount due from his co-tenants on a rent-decree does not acquire a charge over the shares of his defaulting co-tenants. (15 C. W. N. 782).

The section does not say how the person making the payment is to obtain possession of the tenure. Under Cl. 4, of Sec. 13 of Reg. VIII of 1819, a person making a deposit to stay the sale of a superior tenure was entitled to be put in possession of the tenure of the defaulter "on applying for the same." These words do not occur in this section. It seems, however, that the same procedure applies here and a person who has made a payment under Sec. 171 of the Act is not bound to bring a regular suit for the purpose of being placed in possession. (6 C. L. J. 592 ; 13 C. W. N. 1175).

[Problem.—A holds, over a portion of the holding of a raiyat B, a Zuripeshgi lease. Of the remaining portions some are in the possession of a korfa raiyat under B and some are in the direct possession of B. In execution of a rent-decree by the landlord against B, the entire holding is advertised for sale. To protect his own interest, which would be

voidable upon the sale, A deposits the decretal amount under Sec. 171 B. T. A. A then applies to the executing Court to be placed in possession of such portions of the holding as were not covered by the Zuripeshgi lease. Should A's prayer be granted? B. L. 1912 (a), Ans. Under Sec. 171 (c), A is entitled to the possession of the *entire* holding. But as he stands in the shoes of B., the korfa raiyat would continue to remain in possession of his portion as he would under B. When a deposit is made under Sec. 171, the depositor can, as against the judgment-debtor, obtain delivery of possession of the holding advertised for sale by applying to the executing Court; but by such application the depositor is not entitled to invite the executing Court to oust a stranger to the proceeding: if he is met by a stranger, his remedy is by a regular suit for recovery of possession. (*Ramnarayan v. Laldas*, 12 C. W. N 55).]

Liability of mortgagee for rent—A person who enters into possession of a tenure as mortgagee under the provisions of Reg. VIII 1819 cannot appropriate the whole of the collections to the satisfaction of his own claim. He is bound, in the first place, to pay the rent due to the landlord; nor is the defaulter liable for the rent of the tenure during the period of possession by the person so holding it as mortgagee (12 Cal. 845). The same principle seems to be applicable in the case of persons obtaining possession under this action.

Nothing in this Act shall affect any other remedy etc.—The remedy provided by Sec. 171 is, in addition to, and not in derogation of, any other remedy to which the person making the payment is entitled under the law. So he can recover the money by suit.

15. Inferior tenant paying into Court may deduct from rent—When a tenure or holding is advertised for sale, (a) under this chapter, in execution of a decree against a superior tenant defaulting, or (b)

in execution of a certificate signed under the Public Demands Recovery Act, 1913 for arrears of rent due in respect of the tenure or holding from a superior tenant defaulting, or when such sale is set aside under S. 174, and an inferior tenant, pays money into Court in order to prevent or set aside the sale, as the case may be, such inferior tenant may, in addition to any other remedy provided for him by law, deduct the whole or any portion of the amount so paid from any rent payable by him to his immediate landlord, and that landlord, if he is not the defaulter, may in like manner deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached. (S. 172).

Under what circumstances and at whose instance, may the sale of a tenure or holding in execution of a rent-decree be set aside?

P.L. 1909.

B.L. 1907.

If the sale of a tenure or holding has already taken place in execution of the landlord's decree for rent, discuss the means which, under the B. T. Act, may be adopted and the persons who may have the right to adopt them, in order that the sale may be set aside. Is

16 Application to set aside sale.—(1) Rules 89 and 90 of Order XXI in Schedule I to the Code of Civil Procedure, 1908 shall not apply in cases where a tenure or holding has been sold for arrears of rent due thereon, but in such cases the judgment-debtor, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the sale, apply to the Court to set aside the sale, on his depositing—

(a) for payment to the decree-holder, the amount recoverable under the decree up to the date when the deposit is made with costs :

(b) for payment to the auction-purchaser, as penalty a sum equal to five *per cent* of the purchase-money, but not less than one rupee.

(2) Where a person makes an application under sub-section (3) for setting aside the sale of his tenure or holding he shall not, unless he withdraws that application, be entitled to make or prosecute an application made under sub-section (1).

(3) Where a tenure or holding has been sold for arrears of rent due thereon, the decree-holder, the judgment-debtor, or any person whose interests are affected by the sale, may, at any time within six months from the date of the sale, apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting the sale :

Provided as follows :—

(a) no sale shall be set aside on any such ground unless the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud ; and

(b) no application made by a judgment-debtor or any person whose interests are affected by the sale under this sub section shall be allowed unless the applicant either deposits the amount recoverable from him in execution of the decree or satisfies the Court, for reasons to be recorded by it in writing, that no such deposit is necessary.

(4) Rule 91 of Order XXI in Schedule I to the Code of Civil Procedure, 1908, shall not apply to any sale under this chapter.

(5) An appeal shall lie against an order setting aside or refusing to set aside a sale :

Provided that where the Court has refused to set aside the sale on the application of the judgment-debtor or any person whose interests are affected by the sale and the amount recoverable in execution of the decree is not in deposit in Court, no such appeal shall be admitted unless the appellant deposits such amount in Court. (S. 174).

Note.—This section has been substituted for the old section by the B. T. (Amendment) Act IV of 1928. The object of the amendment is thus explained in the *Notes on Clauses* to the Bill : “Under the old section 174 the judgment debtor alone can deposit the decretal amount but not any other person whose interests are affected by the sale. These other persons have to apply under C. P. Code. This section is intended to cover the cases of all these persons also. Sub-Sec. (3) is intended to prevent false and vexatious applications for setting aside sale. The Select Committee’s view that an appeal should lie against an order setting aside or refusing to set aside a sale has been accepted in sub sec. (5) of the new section 174.” Under the old section, the

there any difference between the procedure laid down in this connection in the B.T. Act and the C. P. C. ? If so what ? B.L. 1911(b). Within what time and under what condition may a judgment-debtor apply to have the sale of a tenure for arrears due thereon set aside ? B.L. 1897, 1912 (a). When a tenure is sold in execution of a decree for arrears of rent, who is entitled under the Bengal Tenancy Act to apply for setting aside the sale by deposit of the decretal sum and damages ? B.L. 1924 (a).

judgment-debtor alone could apply to set aside the sale by depositing the decretal amount etc. within 30 days from the date of the sale. Other persons whose interests were affected by the sale had to apply under the Civil Procedure Code. Under the new section, the provisions of R¹. 89 and 90, O. 21. C. P. C. have been made inapplicable in case of a rent sale but the judgment-debtors as well as any other persons whose interests are affected by the sale has been given the right to apply to set aside the sale on the ground of material irregularity or fraud within 6 months from the date of the sale. The provisions of the new section would seem to apply only to sales held after the commencement of Act IV of 1928 (*i.e.* since the 21st February, 1929).

16-A. Sale when to become absolute or be set aside and return of purchase-money in certain cases—(1) Where no application is made under section 174 or where such application is made and disallowed, the Court shall make an order confirming the sale and thereupon the sale shall become absolute

(2) Where such application is made and allowed, and where in the case of an application under sub-section (1) of section 174, the deposit required by that sub-section is made within thirty days from the date of sale, the Court shall make an order setting aside the sale :

Provided that no order shall be made unless notice of the application has been given to all persons affected thereby.

(3) Where a sale is set aside under this section, the purchaser shall be entitled to an order against any person to whom the purchase money has been paid for its repayment with or without interest as the Court may direct.

(4) No suit to set aside an order made under this section shall be brought by any person against whom such order is made. (S. 174-A).

Note.—This section is new. It was necessary in consequence of the changes made in S. 174 which bar the

Application of Rr. 89 and 90, O. 21, C. P. C. to sales under this chapter.

Rule 89, Order 21, C. P. C.—Where immoveable property has been sold in execution of a decree, *any person either owning such property or holding an interest therein by virtue of a title acquired before such sale* may apply to have the sale set aside on his depositing in Court (a) for payment to the purchaser, a sum equal to 5 p. c. of the purchase-money, and (b) for payment to the decree-holder, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, less any sum which may, since the date of such proclamation of sale have been received by the decree-holder.

Rule 90, O. 21, C. P. C.—Where any immoveable property has been sold in execution of a decree, the decree-holder or any person entitled to share in a rateable distribution of assests or whose interests are affected by the sale may apply to the Court to set aside the sale on the ground of material irregularity or fraud in publishing or conducting it causing substantial injury to the applicant.

Rule 91, O. 21, C.P.C.—The purchaser at a sale in execution of a decree may apply to the Court to set aside the sale on the ground that the judgment-debtor has no saleable interest in the property sold.

CHAPTER XV.—Contract and Custom

(Secs. 178-183.)

1. Restrictions on Contracts :—(1) Nothing in any contract between a landlord and a tenant made *before or after* the passing of this Act—

(a) shall bar in perpetuity the acquisition of an occupancy-right in land ; or

(b) shall take away an occupancy right in existence at the date of the contract ; or

Restriction on exclusion of Act by agreement. What contracts between landlords and tenants are

THE BENGAL TENANCY ACT.

declared to be void?

3. L. 1891.

Is a raiyat

excluded

from acquiring

occupancy

right by entering

into a

contract with

the landlord

that he would

not claim such

right?

3. L. 1896.

Is the B. T.

Act in any

way affected

private contracts

between

landlords and

tenants made

with their free

consent? If

so, state some

of the more

important

restrictions

imposed by

the Act.

3. L. 1912(b).

State how far

the Bengal

Tenancy Act

has curtailed

the freedom

of contract

between land-

lords and

tenants. B. L.

917(b), 27(b).

928 (b).

Enumerate the

cases in which

a contract

between a

landlord and

a tenant is not

valid under

the B. T. Act?

(c) shall entitle a landlord to eject a tenant otherwise than in accordance with the provisions of this Act; or

(d) shall take away or limit the right of a tenant, as provided by this Act, to make improvements and claim compensation for them, or

(e) shall entitle a landlord to recover as rent, from a tenant whose rent is a share, as opposed to a fixed quantity of produce, produce in excess of half the gross produce of the holding for the year for which the rent is claimed, or

(f) shall take away or limit the rights of an under-*raiyyat* as against his immediate landlord, as set forth in Chapter VII, or

(g) shall take away or limit the right of an occupancy-*raiyyat* to transfer his holding or any share or portion thereof in accordance with the provisions of sections 26B to 26J, or

(h) shall take away or limit the rights of occupancy-*raiyyats* in trees on their holdings, as provided in section 23A, or

(i) shall affect the provisions of section 67 relating to interest payable on arrears of rent.

(2) Nothing in any contract made between a landlord and a tenant since the 15th of July, 1880, and before the passing of this Act, shall prevent a raiyat from acquiring in accordance with this Act an occupancy-right in land.

(3) Nothing in any contract made between a landlord and a tenant after the passing of this Act shall—

(a) prevent a raiyat from acquiring, in accordance with this Act, an occupancy-right in land;

(b) take away or limit the right of an occupancy raiyat to use land as provided by sec. 23;

(c) take away the right of a raiyat to surrender his holding in accordance with sec. 86;

(d) take away the right of an occupancy raiyat to

sublet subject to, and in accordance with, the provisions of this act ;

(e) take away the right of a raiyat to apply for a reduction of rent under sec 38 or sec. 52 ;

Provided as follows :—

(i) Nothing in this section shall effect the terms or conditions of a lease granted *bonafide* for the reclamation of waste land. *But* where, on or after the expiration of the term created by the lease, the lessee would (under Chapter V) be entitled to an occupancy right in the land comprised in the lease, nothing in the lease shall prevent him from acquiring that right.

(ii) When a landlord has reclaimed waste land by his own servants or hired labourers, and subsequently lets the same or a part thereof to a raiyat, nothing in this Act shall affect the terms of any contract whereby a raiyat is prevented from acquiring an occupancy right in the land or part during a period of 30 years from the date on which the land or part is first let to a raiyat.

(iii) Nothing in this section shall affect the terms or conditions of any contract for the temporary cultivation of horticultural or orchard land with agricultural crops.

Explanation.—The expression “horticultural land” as used in Proviso (iii),—means garden land, in the occupation of a proprietor or permanent tenure-holder, which is used *bonafide* for the cultivation of flowers or vegetables, or both, grown for the personal use of such proprietor or permanent tenure-holder and his family, and not for profit or sale (S. 178).

Note.—The Bengal Tenancy Act has, to a great extent, affected private contracts entered into between landlords and tenants, the chief object aimed at being to protect *tenants* from the consequences of their own acts. A tenant cannot now contract himself out of his status and even if he does so, the contract would be unenforceable. Sec. 178 deals with 4 different classes of contracts having regard to their nature and scope namely—(1) contracts made *before or after* the passing of the Bengal Tenancy Act for the purpose of

B.L. 1913(a).
Can duly executed and registered contracts be avoided by tenants or landlords ?
If so, in w class of ca
B.L. 1915 (b).
Enumerate some instances in which the provisions of the B. T. Act allow a party to go against the effect of a contract entered into by him as a free agent.
B.L. 1927 (a), 1928 (a), 1929(b).
What contracts between landlords and tenants are declared to be void ?
B.L. 1926(b).

depriving the tenants of certain rights, either vested in the present or likely to arise in the future or of enabling the landlord to eject the tenant otherwise than in accordance with the provisions of this Act ; (2) contracts made between the 15th of July, 1880 (the date of the publication of the Rent Commissioner's Report and of the Draft Bill prepared by the Commission) and the passing of the Act (*i.e.* 14th of March, 1885) to prevent a raiyat from acquiring, in accordance with the Act, an occupancy right in the land ; (3) contracts made *after* the passing of the Act and (4) contracts relating to waste land and to horticultural or orchard-land let for temporary cultivation of agricultural crops. (Finucane).

Cls. (e) to (h) of Sub-sec. (1) have been newly inserted by Act IV of 1928. Old cl. (h) of Sub-sec. (3) has been transferred under Sub-sec. (1) as clause (f). Cls. (d) and (g) of Sub-sec. (3) of the old section have been omitted and cls. (e) and (f) of Sub-sec. (3) have been re-numbered as cls. (d) and (e) respectively. The object of the amendments is thus explained in the *Notes on Clauses* :—"The changes proposed in S. 178 are mainly consequential upon the general principles adopted regarding rights of under-raiyats and transferability. In particular, it is proposed to prevent any contract, whether made before or after the passing of the B. T. Act, from taking away or limiting the statutory right of an under-raiyat as against his immediate landlord or the right of transferability of an occupancy raiyat or under-raiyat or their rights regarding trees. It is also proposed to limit the right of a landlord to recover from a raiyat or under-raiyat as rent produce in excess of half the gross produce of the holding."

Sub-sec. (1), cl. (e)—This clause is new. It seems to apply to cases where the bargadars are tenants.

Sub-sec. (1), cl. (f)—See new Ss. 48—49 *ante*.

Sub-sec. (1), cl. (g)—See new Ss. 26J to 28J. *ante*.

Sub-sec. (1), cl. (h)—In view of the amended S. 23 and

new sec. 23A all contracts barring the occupancy-raiyat's right to cut down and appropriate trees are void under this clause. This clause seems to apply only to *occupancy-raiyats* and not to raiyats at fixed rates. Under new cl. (c) of sub-sec. (1) of S. 18 a raiyat at fixed rate is to be deemed to be a settled raiyat if he complies with the provisions of S. 20. But the provisions of S. 23A do not apply to raiyats at fixed rates. So there seems to be no bar to a landlord taking away or limiting by contract the rights of raiyats at fixed rate in trees on the is holdings. (Sen's B. T. Act, 1943).

Sub-sec. (1) cl. (i)—This was cl. (h) of sub-sec. (3) of the old section. Sub-sec. (1) refers to contracts made either *before or after* the passing of the B. T. Act, while sub-sec. (3) refers to contracts made *after* the passing of the Act. The result of the change is that the provisions of S. 67 will apply to contracts made before or after the passing of the B. T. Act, so much so that a landlord is not entitled to recover interest at a higher rate than that allowed by S. 67 even in respect of holdings created before the B. T. Act came into force. The provisions of this clause seems to be retrospective in operation. But in 33 C. W. N. 123 notes, it has been held that this clause is not retrospective in operation. See notes under S. 67 *ante*.

Sub-sec. (3), cl. (d)—This was cl. (e) of the old section. The old cl. (d) "take away the right of the raiyat to transfer or bequeath his holding in accordance with local usage" has been repealed by Act IV of 1928 and the old cl. (e) has been renumbered as new cl. (d). See *ante*. As the B. T. Amendment Act of 1928 has made all occupancy holdings transferable independently of custom or usage, the old cl. (d) has been repealed as unnecessary.

Proviso (iii)—If a tenant is given a temporary lease of horticultural lands for the cultivation of ordinary crops, he should not be allowed to retain them after the expiry of the lease on the plea that occupancy rights have accrued.

Explain this section and give illustrations. B. L. 1918 (b). Is a stipulation valid to eject on breach of each of the following conditions laid down in a deed creating a permanent mukarari lease in a permanently settled area :—(a) not to alienate, (b) to give 10 maunds of ghee every year at puja time in addition to the rent, (c) to pay interest on arrears at 15 per cent? B.L. 1926(b). In a darpatni lease, it is stipulated that annually Rs. 500 will be paid as rent, and Rs. 10 in the event of the tenant's default to supply the landlord with certain quantity of molasses. The darpatni is sold at an execu-

2 Permanent Mukarari leases—Nothing in this Act shall be deemed to prevent a proprietor or a holder of a permanent tenure in a permanently settled area from granting a permanent mukarari lease on any terms agreed on between him and his tenant.

Provided that such proprietor or holder shall not be entitled to recover interest at a rate exceeding that set forth in section 67 or anything that is an *abwab* or the recovery of which is ill under the provisions of section 74 or sub-section (3) section 77 (S. 179)

Note.—"Under the present interpretation of S. 179 conditions for *abwab* [which are illegal under S. 74 or S. 77 (3)] or for interest on arrears of rent in excess of that allowed by S. 67 can be embodied in permanent *mukarari* leases. It is proposed to make such conditions in future leases of the description invalid." (Notes on Clauses).

Mukarari.—The word "Mukarari" means "with fixed rent." A permanent, mukarari lease implies that the tenancy is permanent, heritable and transferable and that the rent is fixed in perpetuity, (12 C. W. N. 154).

Stipulation to pay interest at a higher rate than that allowed by sec. 67.—Prior to the amendment of 1928, S. 179 controlled Sec. 67, so that in granting a permanent lease within the terms of sec. 179 a condition that interest should be payable at a higher rate than that allowed by sec. 67 was valid (29 Cal. 674). Since the amendment of 1928, S. 179 is controlled by S. 67 and the result is that stipulations as to payment of interest in excess of what is allowed by S. 67 contained even in permanent mukarari leases are now invalid. See Notes under S. 67 *ante*.

Stipulation to pay *abwab*.—Prior to the amendment of 1928, Sec. 74 did not control S. 179 and accordingly a stipulation for the payment of an *abwab* in a permanent *mukarari* lease was valid. (3 C. W. N. 603.) [But where a permanent tenancy was created by a lease executed *before the passing of the B. T. Act*, the provision of sec. 179 would

not apply and the landlord could not recover *abwabs* from the tenant. (4 C. L. J. 527)]. Since the amendment of 1928, S. 179 is controlled by S. 74, so much so that all stipulations for payment of *abwabs* contained even in permanent *mukarari* leases are now invalid. See Notes under S. 74 *ante*.

[**Problem**—A putnidar stipulates to pay annually Rs. 100 as rent and 5 goats or Rs. 10 as their price. He further stipulates to pay 24 *per cent* interest on arrears of rent. How far are these stipulations valid or invalid under the B. T. Act and why? B. L. 1903. See above].

3. Utabandi, Chur and Dearah lands :—(1) Notwithstanding anything in this Act, a raiyat—(a) who, in any part of the country where the custom of *utbandi* prevails, holds land ordinarily let under that custom and for the time being let under that custom, or

(b) who holds land of the kind known as *chur* or *dearah*—

shall not acquire a right of occupancy in such land, until he has held the land in question for 12 continuous years; and until he acquires a right of occupancy in the land, he shall be liable to pay such rent for his holding as may be agreed on between him and his landlord.

(2) Chapter VI (Non-occupancy raiyat) shall not apply to raiyats holding land under the custom of *utbandi* in respect of land held by them under that custom.

(3) The Collector may, on the application of either the landlord or the tenant or on a reference from the civil Court, declare that any land has ceased to be *chur* or *dearah* land within the meaning of this section and thereupon all the provisions of this Act shall apply to the land. (S. 180.)

Utbandi.—(From *uthit*—risen, cultivated and *bandi*—*bandabast*—assessment.) “Utbandi” means assessment according to the cultivation or a settlement of revenue with reference to the quality of the land, the description of produce and customary rate of assessment. (Wilson’s Glossary).

tion sale, is the purchaser bound to pay Rs. 10 to the landlord? Discuss.
B.L. 1924(b).
A proprietor of an estate in a permanently settled area grants a permanent *mukarari* lease to B. May any of the provisions of the B. T. Act be contravened?
B.L. 1911(a).

The system prevails in the districts of 24 Parganas, Nuddea, Jessore, Khulna, Murshidabad and also in Pabna. "Utbandi is applied to land held for a year, or rather for a season only. The general custom is for the husbandman to get verbal permission to cultivate a certain amount of land in a particular place. When the crop is on the ground, the land is measured and the rent is assessed on it." "An utbandi tenure is one by which a raiyat holds a certain area of land, but for which he pays rent according to the quantity of that land which year by year he cultivates. The rent will, therefore, vary according to the actual cultivated area." (*Per Jackson, J. in 14 W. R. at p. 194*). It is a tenancy from year to year and sometimes from season to season, the rent being regulated not by a lump payment in money for the land cultivated, but by the appraisal of the crop on the ground and according to its character. So far it resembles the crop-appraisal of the "bhaoli" system; but there is this marked difference, that while in the latter the land does not change hands from year to year in the former it may.

Broadly speaking, it may be said that the *utbandi* system is a tenancy-at-will. The amount of rent of utbandi land is regulated by, and varies according to, year to year, the tenant being at liberty to relinquish at the end of the year any portion of the land cultivated in the previous year that he may think fit or to take up new land with the landlord's consent, express or implied, and the landlord being at liberty to oust the tenant from the whole or any part of his *utbandi* land that he may think fit at the end of the year. This is the normal type of the utbandi tenure.

Sec. 180 puts the *utbandi* lands on the same footing generally as *chur* or *dearah* lands but provides in sub-sec. (3) that the Collector may on the application of the landlord or tenant or on a reference from the Civil Court, declare that any land has ceased to be *chur* or *dearah* land whereupon all the provisions of the Act are to apply to such land.

No such power however is given to the Collector to declare that *utbandi* land shall cease to be *utbandi* or that the custom of *utbandi* shall cease to prevail in respect of any such land.

Chapter VI of the Bengal Tenancy Act does not apply to raiyats holding land under the custom of *utbandi* in respect of land held by them under that custom, so that a raiyat may be ejected from the *utbandi* land though he may be willing to pay a fair and equitable rent, since Sec. 44 does not apply; but if a tenant of *utbandi* land refuses to vacate it voluntarily, he cannot be ejected except in execution of a decree, since Sec. 89, applies to all tenants save holders of service tenures.

Chur or dearah land.—The expression *chur* or *dearah* land has not been defined in the Act, but *chur* means a sand bank formed in a river or which has accreted to its bank, while *dearah* means an island formed in the bed of a river. Under Sec. 180, a tenant cannot acquire occupancy right in a plot of *utbandi*, *chur* or *dearah* land unless and until he has held that particular plot for 12 years continuously. Moreover the presumption which is created by sec. 20, clause (7) of the Act cannot be applied to land to which sec. 180 applies and consequently in *utbandi*, *chur* or *dearah* lands the person who alleges that he has been for 12 continuous years in possession, must prove that allegation.

3A. (1) Notwithstanding anything contained in section 180, when a *raiya* who is or who but for the operation of S. 180 in respect of land held under the custom of *utbandi* would have been a settled *raiya* of the village, holds or has held under the custom of *utbandi*, or under any form of tenancy locally known as *utbandi* land (hereinafter referred to as *utbandi* land), either the landlord or the *raiya* may apply to have a uniform annual money rent determined for the land.

(2) The application shall include at the discretion of the applicant either—

(i) all *utbandi* lands held in the same village by the same *raiya* under the same landlord in which the *raiya* has

acquired a right of occupancy whether under the provisions of section 180 or otherwise, or

(b) all the lands held in the same village under the same landlord by the *raiyat* which the *raiyat*, or any deceased person whose heir he is, has cultivated as *ulbandi* land at any time during the preceding period of six years if he or the said deceased person is the last person to have cultivated the land and has not or had not acquired occupancy rights therein, or

(c) both.

(3) Subject to the provisions of sub-section (2), a single application may be made by a landlord in respect of lands held as *ulbandi* lands in the same village by one or more *raiyats* under him and a joint application may be made by two or more *raiyats* in respect of lands held by them as *ulbandi* lands in the same village under the same landlord.

(4) The application may be made to the Collector or to a Subdivisional Officer or to a Revenue Officer appointed by the Local Government under the designation of Settlement Officer or Assistant Settlement Officer for the purpose of making a survey and record-of-rights under Chapter X or to any other officer specially authorized by the Local Government.

(5) The case may be determined by the officer who receives the application, or the Collector or the Settlement Officer may transfer it for disposal to some other officer competent under sub-section (4) to receive applications.

(6) The officer receiving the application or the officer to whom the case is transferred, as the case may be, shall cause notice to be given in the prescribed manner to the opposite party, and shall fix a date for the determination of the case.

If the immediate landlord of the *raiyat* is a temporary tenure-holder or *ijaradar*, the officer receiving the application shall also give notice to the superior landlord in the lowest decree, who is a proprietor or permanent tenure-holder.

(7) If the application is made in respect of lands in which the *raiyat* has not acquired occupancy rights, the officer may reject it in respect of such lands, if he is satisfied in view of all the circumstances of the case that it is unreasonable to grant it :

Provided that a refusal shall be no bar to proceedings being again taken under this section after five years from the date of refusal if in the opinion of the officer who then

receives the application the circumstances have in the meantime changed.

(8) If the application is not rejected, the officer shall then determine the sum to be paid as a uniform annual money rent, and also in the case of lands in which the *raiyat* has not acquired occupancy rights, a premium to be paid to the landlord, and he shall order that the *raiyat* shall, in lieu of paying the rent for the land as *utbandi* land, pay the sum so determined and the premium, if any :

Provided that in any case in which an order fixing a uniform annual money rent is passed *ex parte* the opposite party may within one month of the date of such order or, when the notice has not been duly served, within one month of the date of his knowledge of such order apply to the officer by whom the order was passed for an order to set it aside and, if he satisfies the officer that the notice of the application under sub-section (1) was not duly served on him or that he was prevented by any sufficient cause from appearing when the case was determined, the officer shall set aside the order and shall appoint a day for the determination of the case. No order shall be set aside on application made under this proviso unless notice thereof has been served on the respondent thereto.

(9) In making the determination of the sum to be paid as rent, the officer shall calculate the average of the amount that was actually paid or payable as rent for the land for the previous six years and shall ordinarily declare the same as the sum to be paid as rent :

Provided that the officer may also take into consideration—

(a) the average money rent payable by occupancy *raiyats* for land of a similar description and with similar advantages in the vicinity ;

(b) the average rates for lands of similar description and with similar advantages in the vicinity held as *utbandi* lands ;

(c) the average money rent payable for lands of a similar description and with similar advantages in the vicinity by *raiyats* who formerly paid their rent for those lands as *utbandi* lands but whose rents have been converted into uniform annual money rents whether under this section or by agreement or otherwise ;

(d) the charges incurred in accordance with custom by the landlord in respect of the irrigation and drainage of the

utibandi lands and the arrangements made for continuing those charges ;

(e) the rules laid down in this Act for the guidance of the Civil Courts in enhancing or reducing rents on account of the holdings of occupancy *raiyats* ;

(f) any sum agreed to by the parties to be paid as money rent :

Provided that the officer shall in no case determine a rent which is unfair or inequitable.

(10) The premium to be paid to the landlord in the case of lands in which the *raiyat* has not acquired occupancy rights shall be three times the rent, or, if the application is made under clause (c) of sub-section (2) three times the portion of the rent determined under sub-section (8) on account of such lands.

(11) If the immediate landlord of the *raiyat* is a temporary tenure-holder or *ijaradar*, the officer shall apportion the premium payable under sub-section (10) between the said temporary tenure-holder or *ijaradar* and his superior landlord of the lowest degree who is a proprietor or permanent tenure-holder in such manner as may appear fair and reasonable to the officer in view of all the circumstances of the case, and any sum so awarded to the said superior landlord shall be recoverable by him from the temporary tenure-holder or *ijaradar* or his successor in interest as an arrear of rent but shall not be recoverable by the superior landlord from the *raiyat*.

(12) The order shall be in writing, shall state the grounds on which it is made, and shall, in the absence of any special reasons to the contrary recorded in writing, take effect from the beginning of the agricultural year next after the date on which it is made.

(13) The officer shall fix the date (not being more than one month from the date of the order) by which the premium shall be paid or he may, on the application of the *raiyat*, order that the premium shall be paid by instalments not exceeding three in number, that the first instalment shall be paid at the beginning of the agricultural year in which the rent settled under sub-section 8 takes effect and one of the remaining instalments shall be paid at the beginning of each of the succeeding agricultural years until the premium is paid in full.

(14) The premium or any instalment thereof shall be recoverable as rent and if the premium or any instalment thereof is not paid by the date fixed under sub-section (13).

for the payment of such premium or instalment the landlord may make a requisition to the Collector for the recovery of the arrear of the same in the manner set forth in sub-sections (3) and (4) of section 158A, and the provisions of sub-sections (5) to (9) of that section shall apply to the recovery of the said arrear by the Collector as if it were an arrear of rent, recoverable by him under the provisions of that section.

Interest shall not be payable on any instalment in respect of which default has not been made.

The Local Government may make rules to provide for the form of requisition to be made by a landlord under this sub-section and for carrying into effect the purposes of this sub-section.

(15) Any order made under this section shall be subject to appeal in the manner provided in section 115C unless the application has been made in the course of proceedings under Part II of Chapter X, in which case the provisions of sections 104G and 104H shall apply.

(16) An application made under sub-section (1) may be amended if it appears at any time to the officer prior to the issue of the order under sub-section (7) or sub-section (8) or to the appellate or revisional Court that it does not comply with the provisions of sub-section (2) but that it can be brought into conformity with that sub-section. Such amendment may be made either on the initiative of the parties or of the officer or court but it shall not be made unless prior notice thereof is given to the parties, and, if such amendment is made, it shall be made only on such terms or conditions as to such officer or Court shall appear to be just.

(17) Notwithstanding anything contained elsewhere in this Act or in any other law, no suit shall be brought or application made in any Court in respect of any order passed under this section, save as is provided in this section. (S. 180-A).

3 B. Whenever an order under section 180A is passed determining a uniform annual money rent for any lands, such lands shall cease to be held as *utbandi* lands with effect from the date from which the new rent takes effect, and the tenant shall hold them as an occupancy *raiyat* from the date of the order. (S. 180-B).

3 C. (1) Where a uniform annual money rent has been fixed under section 180A, the said rent shall not, except on the ground of a landlord's improvement or of a subsequent alteration of the area of the holding, be enhanced for fifteen

Lands in respect of which a uniform annual money rent has been fixed under section 180A to cease to be *utbandi* lands. Period for which rent fixed under

section 180A
to remain
unaltered.

years ; nor shall it be reduced for fifteen years, save on the ground of alteration in the area of the holding, or on the ground specified in clause (a) of sub-section (1) of section 38.

(2) The said period of fifteen years shall be counted from the date on which the order takes effect under sub-section (12) of section 180A. (S. 180-C. 5).

Note.—Ss. 180-A to 180-C have been added by B. T. (Utbandi Amendment) Act X of 1923 which extends in the first instance only to the districts of Nadia, Murshidabad and Jessor, but the Local Government may, by notification in the Calcutta Gazette, extend it to any other district or part of a district in Bengal.

Saving of
service
tenure.

4. Service Tenures—Nothing in this Act shall affect any incident of a ghatwali or other service tenure, or, in particular, shall confer a right to transfer or bequeath a service-tenure which before the passing of this Act, was not capable of being transferred or bequeathed. (S. 181).

Write a short
notes on
Ghatwali
lands, with
reference to
decisions of
the Privy
Council,
B.L. 1924(a).

Ghatwali tenures—*Ghat* means “a landing place,” “the terminus of a ferry on either side of the river,” “a mountain pass.” *Ghatwali* is a person in charge of a ferry or of a mountain pass. (Field).

The mountain or hill districts in India were inhabited by lawless tribes, asserting a wild independence, often of different religion from the inhabitants of the plains, who were frequently subjected to marauding expeditions by their more warlike neighbours ; to prevent these incursions it was necessary to guard and watch the *ghats*, or mountain passes, through which these hostile descents were made ; and the Mahomedan Rules established a tenure called *Ghatwali* tenure by which lands were granted to individuals, often of high rank, at a low rent or without rent, on condition of their performing these duties, and protecting and preserving order in neighbouring districts. (6 M. I. A. at p. 109). In the case of *Lilananda Singh v. Manoranjan Singh* (3 Cal. 251) Garth, C. J. remarked that the Ghatwali tenures were created by the Mahomedan Government in early times, as a

means of providing a police and military force to watch and guard the mountain passes from the invasions of the lawless tribes who inhabited the hill districts. Large grants of land were made in those days by the Government, often to persons of high rank, at a low rent or at no rent at all upon condition that they should provide and maintain a sufficient military force to protect the inhabitants of the plains from these lawless incursions; and the grantees on their part subdivided (and regranted) the lands to other tenants (much in the same way as military tenures were created in England in the feudal age) each of whom, besides paying generally a small rent, held their lands in consideration of those military services, and provided (each according to the extent of his holding) a specified number of armed men to fulfil the requirements of the Government.

There is "a considerable variety in the tenures known under the general name of *ghatwali* in different parts of the country. They, however, all agree in this that they are grants of land situated on the edge of the hilly country and held on condition of guarding the *ghats* or passes. Generally, there seems to be a small quit-rent payable to the *Zemindar* in addition to the services rendered; and with the view of marking the subordination of the tenure. But in some *Zemindaries* and *putnies* these tenures are of a major, in others of a minor, character. Sometimes, the tenure of the great *Zemindar* himself seems to have been originally of this character. More frequently, large tenures consisting of several whole villages are held under the *Zemindar*. In other places, e.g. in Bishnupore, as explained by Harrington (Analysis, Vol. III p. 510) the *Sardar* and Superior *ghatwalis* have small and specific portions of land in different villages assigned for their maintenance. These last, says Harrington, are analogous to the *chakran* assignment of land to village watchmen in other districts. But he goes on to explain that the *ghatwali* tenure differed essentially from

Difference between ghatwali and other chakran tenures.

the common *chakran* in two respects :—*First* that the land is not liable to resumption at the discretion of the landholder, nor the assessment to be raised beyond the established rule ; and *secondly*, that although the grant is not expressly hereditary and the *ghatwali* is removeable for misconduct, it is the general usage on the death of a faithful *ghatwali* to appoint his son, if competent, or some other fit person in his family to succeed to the office." (*Per* Trevor and Cambell, J.J. in *Manoranjan Singh v. Lilananda Singh*, 3 W. & R. 84).

What are the incidents of chakran lands ? State the law with regard to resumption of these classes of land. Discuss this in the light of the principles laid down in the Privy Council decisions.
C.U. 1921(a).

Chakran or Service-tenures—*Chakran* or service-tenure is a grant of land conferred by Zemindars upon their servants or retainers in consideration of public or personal services to be rendered by them. Before the British possession of India, the *Zemindars* were entrusted as well with the defence of the territory against foreign enemies as with the administration of law and the maintenance of peace and order within their district ; for this purpose, they were accustomed to employ not only armed retainers, but also a large force of *Thanadars* or a general police force, and other officers in great numbers under the names of *choukidars*, *patiks*, and other descriptions as well for the maintenance of order as for the protection of the property of the *Zemindar*. All these different officers were at that time the servants of the Zemindar, appointed by him and removeable by him, and they were remunerated in many cases by the enjoyment of land rent-free or at a low rent in consideration of their services. The lands so enjoyed were called *chakran* or service lands. A service-tenure created for the performance of services, private or personal, to the Zemindar may be resumed by the Zemindar, where the services are no longer required or when the grantee of the tenure refuses to perform them. But a *Zemindar* is not entitled to resume when the grant is of a public nature. There are various forms of service-tenures of which the

choukidari, *thanadari*, and *phauridari chakrans*, the *patwari* and *patkari jagirs* and *ghatwali* tenures are the most important. The effect of the Decennial Settlement was to divide *chakran* lands into two classes :—(1) Thanadari lands which by Reg. I of 1793, Sec. 8, Cl. 4, were made resumable by the Government; (2) all other *chakran* lands, which by Reg. VIII of 1793, Sec. 41, were, whether held by public officers or private servants in lieu of wages, to be annexed to *malguzari* lands and declared responsible for the public revenue assessed on the whole estate. The duty of protecting the life and property having now entirely devolved upon Government, the policy at present is to resume and assess lands of class (1) and accordingly they are being converted into ordinary tenures. The law relating to *choukidari chakran* lands is to be found in Sec. 41, Reg. VIII of 1793 and Act VI of 1879 (B. C.) Ss. 46-61.

Occupancy right in Ghatwali and other service tenures.—Occupancy right cannot be acquired in *ghatwali* lands. "I think that upon principle, having regard to the tenure of *ghatwali* lands, the acquisition of occupancy rights in these lands is inconsistent with the incidents of such tenures." (*Per* Maclean, C.J. in *Upendra Nath Hazra v. Ramanath Choudhury*, 33 Cal. 630).

The Bengal Tenancy Act does not expressly lay down any rule of law with respect to acquisition of either occupancy or non-occupancy right in land held by ghatwals as service-tenures, and the incidents of a ghatwali tenure, which are declared by S. 181 not to be affected by the Act, are nowhere specified. The growth of such rights is inconsistent with the nature of service tenure, but a custom or local usage may grow up in any local area as to recognition of occupancy rights and such a custom is binding upon successive ghatwals. (*Mapesh Majhi v. Prankrishno*, I. C. L. J. 139). [But see 27 C. L. J. 536 where it has been held that from 1859 to 1885 ghatwali lands were

subject to the acquisition of occupancy-right and that S. 181 of the B. T. Act does not take away such right acquired or enjoyed.] No rights of occupancy can accrue in lands held under a service tenure. (4 Cal. 67; 28 C. L. J. 249). But a right of occupancy may be acquired under Sec. 62 Act X of 1859 even in Choukidari chakran land (31 Cal. 1021; 15 C. W. N. 61) but not by the under-tenant or holder of a service-tenant (11 C. W. N. 40). A right of occupancy cannot be acquired in *Kotwali jagir* land (23 C. W. N. 136).

Ejection of service tenure-holders:—Service tenures are excepted from the operation of Sec. 89 of this Act and holders of such tenures can be ejected otherwise than in execution of the decree. (25 Cal. 131). They can be ejected without the service on them of a notice to quit or of a notice under S. 155.

Scope of the Section.—Sec. 181 does not exclude *ghatwali* and other service-tenure from the purview of all the provisions of the Bengal Tenancy Act. It provides merely that nothing in the Act shall affect any incident of these tenures or, in particular, shall confer a right to transfer or bequeath a service-tenure which, before the passing of the Act, was not capable of being transferred or bequeathed. Were it not for the declaration made by this section, *ghatwali* or other service-tenures, whether they be strictly tenures or raiyati-holdings at fixed rates, within the meaning of the Act, would be rendered transferable and heritable by sections 11 and 18. Section 181 is intended especially to guard against transferability. But such provisions of the Bengal Tenancy Act as do not affect the incidents of *ghatwali* or other service-tenures, such as the provision relating to recovery of rent, distraint, survey and record of rights, etc. appear to be applicable to *ghatwali* tenures and raiyati holdings. (Finucane).

Incidents of Ghatwali tenures — Ghatwali tenures are generally inalienable (except by local custom). But a ghatwali tenure in Kharagpur is transferable if the Zemindar assents and accepts the transfer. Such assent may be presumed from the fact of the Zemindar having made no objection to a transfer for a period of over 12 years and when such a fact has been found, a Court ought to recognise such a transfer. (10 Cal. 677) Ghatwali tenures are not liable either to sale or attachment in execution of a decree. They are grants of land given in payment of service, and, although the custom of the country has made them hereditary, they have not otherwise changed their original character. They are life-tenures only, and the incumbent for the time being has no power to burthen them, after his death, with any of his personal liabilities (4 W. R. Mis. 5.) The rents and profits of a ghatwali tenure may, however, be attached in execution of a decree in the life-time of the ghatwal though the estate itself cannot be attached (39 Cal. 1010). In 1 Pat. L. J. 601 it has been held that a ghatwali-tenure is not saleable in execution of a decree for arrears of rent in as much as the right to nominate the ghatwal rests with the Govt., but in *Lakshminarain v. Satyanarain* (1 Pat L. J. 197) it has been decided that Kharagpur ghatwali tenures are liable to be sold in execution of a decree for rent. The rent of a ghatwali tenure is not liable for the debts of the former deceased holder of the tenure. (6 W. R. 129). As a general rule a *ghatwal* is not competent to grant a lease in perpetuity and his successor is not bound to recognise such an incumbrance. (6 W. C.N. 94). But although a ghatwal cannot grant a permanent lease, yet if he does so, he is estopped from questioning it. (65 I. C. 305).

Transferability.

Sales and attachment in execution of decree.

Ghatwali tenures are ordinarily hereditary, the estate descending to such male member of the family as the Zemindar approves as competent. (46 Cal. 362 P. C; 6 M. I. A. 101). Ghatwali tenures in Birbhum are in fact

Heritability.

tenures to be held in perpetuity and are descendible from generation to generation subject to certain conditions and obligations (22 Cal. 156). A ghatwali tenure existing from before the grant of the Dewani to the East India Company and descending from father to son for many generations and held at a quit-rent is permanent and heritable (9 C. W. N. 663). Ghatwals are liable to dismissal for misconduct and personal incapability or failure to perform the conditions annexed to their tenure. The dismissal of a *ghatwal* carries with it the forfeiture of his tenure (5 Cal. 740).

Speaking of the tenure and incidents of ghatwali tenures, their Lordships of the Privy Council in *Satyanarayan v. Satyaniranjan* (28 C. W. N. 351 at p. 361) observe :—"In the Santal Parganas there are, for practical purposes, three classes of ghatwali tenures :—(a) Government Ghatwalis, created by the ruling power ; (b) Government ghatwalis which, since their creation and generally at the time of the Permanent Settlement, have been included in a Zemindary estate and formed into an unit of assessment ; and (3) Zemindari ghatwalis, created by the Zemindar or his predecessors and alienable with his consent. The second of these classes is really a branch of the first. In itself "ghatwali" is a term meaning an office held by a particular person, from time to time, who is bound to the performance of its duties, with a consideration to be enjoyed in return by the incumbent of the office. Within this meaning the utmost variety of conditions may exist. There may be a mere personal contract of employment for wages, which take the form of the use of land or an actual estate in land, heritable and perpetual, but conditional upon services certain or services to be demanded. The office may be public or private, important or the reverse. The ghatwal, the guard of the pass, may be the bulwark of a whole country-side against invaders ; he may be merely a sentry against petty marauders ; he may be no more than a kind of game-keeper, protecting the crops

from the ravages of wild animals. Ghatwali duties, may be divided into police duties and *quasi*-military duties though both classes have lost much of their importance, and the latter in any strict form are but rarely rendered. Again the duties of the office may be such as demand personal discharge by the ghatwala and personal competence for that discharge; they may, on the other hand, be such as can be discharged vicariously, by the creation of shikimi tenures and by the appointment and maintenance of a subordinate force or they may be such as in their nature only require to be provided for in bulk. It is plain that where a grant is forthcoming to a man and his heirs as ghatwal or is to be presumed to have been made, though it may have since been lost, personal performance of the ghatwali services is not essential so long as the grantee is responsible for them and procures them to be rendered..... The superior who appoints him may also in the varying circumstances of the organisation of Hindustan be the ruling power over the country at large, the land-holder responsible by custom for the maintenance of security and order within his estate or simply the private person, to whom the maintenance of watchmen is, in the case of an extensive property, important enough to require the creation of a regular office. It would not be easy to draw with precision the distinction in the duties performable by him, between a person who might properly be called a ghatwal and a person who is only to be styled a chowkidar though the legal incidents of the respective positions are clearly different. At the other end of the scale the term "ghatwal" may be the honourable badge of a great proprietor who in his day was a veritable warden of the Marches. In the minor sense of the word, "ghatwal" can hardly be said to connote a tenure at all. A jagir, assigned for the support and remuneration of a ghatwal may be no more than wages in kind, arising from the usage of a plot of land customarily in the occupation of the ghatwal for the time being and in such a case personal service by the employee and personal selection and

appointment by the employer may well be in every case essential incidents of the relationship. Incompetence and misconduct on the part of the employee may be causes for the removal of the ghatwal and resumption of his holding ; actual appointment may be the necessary initiation and seal of his office ; personal selection may be the whole basis of his service and mere family claims valueless in the matter. On the other hand, there are great estates, whose proprietors are found holding them or parts of them, upon the terms of providing that ghatwali services shall be forthcoming, either regularly or when required, services which it is impossible for the proprietor himself to render in his own person and which become possible to him and to those to whom he renders them simply by virtue of his possession of the lands thus granted. In such cases the ghatwali tenure, even if not originally granted as heritable, easily becomes so, and is commonly found on the death of an incumbent of the office to descend to some member of his family, if not necessarily to the senior member. Thus in Kharagpur ghatwals have a perpetual hereditary tenure at a fixed jumma. A recognised right to be appointed ghatwal, then takes the place of a formal appointment ; a recognised right in the superior to dismiss the ghatwal, if he is no longer able and willing to render the service required by his tenure, and to appoint another person to the office and the tenure of the lands, then readily suffices to maintain in perpetuity the incidents of the tenure. Women of rank have thus in some instances come to be recognised holders of ghatwali lands.....A further incidents of such a tenure is the inalienability of the ghatwali lands, for it is obvious that, if the whole lands were alienated together at the choice of the ghatwals, he would be in a position either to make his own alienee, possibly a person non-resident or unfit, the ghatwal in succession to himself without the consent of his superior, or to deprive himself of the means provided to enable the services to be rendered while himself retaining the office

whose obligations he could, in consequence, no longer fulfil. The office cannot, except by special custom, grant or other arrangement, either run with lands or be severed from them. If the lands are alienated piecemeal—and this must be involved in a right to alienate them at all—same difficulty arises in another form, for here the office being indivisible, the question is to which of a number of several purchasers of the lands is it to pass ?.... It is true that, so far as the superior is concerned, the inconveniences which would arise from allowing to the ghatwal a free right of alienation may be met by reserving to the superior the right of withholding consent to the alienation and thus defeating it and this coupled with the right to appoint a successor to the office when it falls vacant, may in practice be sometimes all the protection that the superior requires but in two points affecting others, it is insufficient. First of all, when the ghatwal's office has become hereditary in his family, alienation by him becomes impossible without infringing the right of his heirs ; and secondly, when the office is of a public character and held for the general good, it is not enough to safeguard the superior's personal right of appointment, but it is also necessary to ensure that the lands and the services shall remain substantially connected so that actual performance and not mere subordination may be assured, and this involves that the lands must remain impartible and inalienable. These considerations peculiarly apply where the superior, by whom ghatwali lands are held, is the ruling power itself. In Mogul times such grants were common ; nor did their existence by any means come to an end with the assumption of the Dewany. Government ghatwali tenures have to some extent lost or appeared to lose, their identity by being included for revenue purposes in the assessment of Zemindary lands held by another and an independent proprietor but the question whether or not a given ghatwali tenure is a Government ghatwali tenure must depend on the original grant, and

unless, the inclusion of the tenure in the assessment of Zemindary lands can be shown to have amounted to a release by the Government of the ghatwali services or to a grant to a third party of the right to receive them and of the right to appoint the ghatwal, the tenure must remain, as it originally was, a Government ghatwali tenure."

Resumption of chakran lands.—Where *choukidari* *chakran* lands are resumed by the Government and settled with a Zemindar, all rights created in such lands by the *choukidar* in favour of third parties come to an end; but if any transfer has been made by the Zemindar before the resumption and the land is settled with him by the Collector, the transferee would be entitled to the benefits of such settlement. (*Krishna v. Mohunt Bhagwan*, 7 C. I. J. 85; *Satyendra v. Krishna Sakha*, 35 C. I. J. 185; *Ranjit Singh v. Kalidasi Debi*, 44 Cal. 844 P. C.) Choukidari *chakran* lands form part of the original estate and when they are resumed and transferred to the Zemindar, the latter does not acquire thereby a new estate (27 C. L. J. 491). Where a putni lease conveyed to the putnidar all the lands on which the Zemindar at the time of the execution of the lease was possessed in the mouzah of which the putni was granted and the mouzah included *choukidari chakran* lands, held that on resumption by the Govt. and on a settlement with the Zemindar under Act VI of 1870, the putnidar became entitled to possession of the *choukidari chakran* land, subject only to payment to the Zemindar of the extra assessment of revenue imposed on account of the resumed lands. [But if in assessing the putni rent, the profits of all the lands including the *chakran* lands were fully taken into account, the putnidar would not be liable to pay additional rent for the *chakran* lands when they came into his possession. (*Kazi Nowas v. Ramjadu*, 11 C. W. N. 201; 5 C. L. J. 35.)] The effect of the transfer by the Collector to the Zemindar of the resumed *choukidari chakran* lands is not

to separate them from the parent estate and grant a new title to them in favour of the proprietor of the estate. A putnidar, if these lands were included within his putni, has the right to recover possession of the lands from the Zemindar on condition of agreeing to a fair and reasonable settlement with the landlord. The terms of the settlement would depend upon the conditions under which the putni was originally created. (15 C. W. N. 5 ; 22 C. W. N. 660 ; 45 Cal. 685 ; 44 Cal. 841 P. C.) The interest of the putnidar in resumed chowkidari chakran lands comprised in his putni is derived from the putni itself, and the Zemindar cannot claim a share in the profits derived from the settlement of such lands and thus in effect to vary the putni (36 C. L. J. 145). But where the contract between the parties in a putni lease does not contain any stipulation for the chakran lands, the landlord is entitled to some rent for the *chowkidari* land, (C. L. J. 275).

5. Homestead—When a *raiyyat* or an under-*raiyyat* holds his homestead otherwise than as part of his holding within the same village or any village contiguous to that village, his status in respect of his homestead shall be that of a *raiyyat* or an under-*raiyyat* according to the status of the landlord of the homestead, and the incidents of his tenancy of such homestead shall be governed by the provisions of this Act applicable to *raiyyat* or under-*raiyyat*, as the case may be (S. 182).

Note.—This section has been substituted for the old section by Act IV of 1928. The object of the amendment is thus explained : "The existing provisions regarding homesteads in S. 182 leaves the law in a state of great doubt and uncertainty. It is proposed, therefore, to provide generally that the homestead rights of a *raiyyat* or under-*raiyyat* of the same or a contiguous village shall ordinarily be regulated by the provisions of the Act." (*Notes on Clauses*). The old section ran as follows : "When a *raiyyat* holds his homestead otherwise than as part of his holding as a *raiyyat*, the

Does the Bengal Tenancy Act apply to the homestead of a *raiyyat* when he holds the homestead otherwise than as part of his agricultural holding as a *raiyyat* ? What is the law applicable to the incidents of his tenancy of the homestead ? B. L. 1918(b). Discuss if the right of occupancy can be acquired in homestead

land ?
 B.L. 1916(b).
 How are the incidents of the homestead land of a raiyat held not as part of his holding regulated ?
 Is his position affected if he holds the homestead under a landlord different from the person under whom he holds the agricultural land ?
 Give reasons for your answer ?
 B.L. 1918(a).
 Under what circumstances may a raiyat acquire a right of occupancy in homestead land ?
 B. L. 1905.
 An occupantcy raiyat, takes by a registered instrument a sublease from a raiyat B, for a term of 3 years only, of a homestead in a different village. The term of the sublease expires. B needs the homestead

incidents of his tenancy of the homestead shall be regulated by local custom or usage, and, subject to local custom or usage, by the provisions of this Act applicable to land held by a *raiya*." The old section applied only to *raiya*s. But the new section applies both to *raiya*s and under-*raiya*s. Custom or usage finds no place in the new section. The status of a *raiya* or under-*raiya* in respect of his homestead when not held as a part of his holding, will now be governed by the status of the landlord of the homestead and the incidents of his tenancy with reference to it will be governed by the provisions of the B. T. Act accordingly as he is a *raiya* or an under *raiya*. Under the new section the homestead of the *raiya* or the under-*raiya* as the case may be must be within the same village as the holding of the *raiya* or the under-*raiya* or any village contiguous to that village ; but it seems that the homestead may be held under a different landlord. Even under the old section it was held that it is not essential that the homestead should be in the same village or be held under the same landlord (22 C. L. J. 220). The provisions of the section are applicable to the homestead of a person who is a *raiya*, although he is not a *raiya* in the village in which the homestead land is situated and is not a *raiya* under the same landlord as the landlord of the homestead land (10 C. W. N. 94 ; 16 C. W. N. 536 ; 9 C. W. N. 416 ; 21 C. L. J. 475.) The words "His status in respect.....homestead" in the new section have made the position of a tenant of a homestead clear and done away with the anomalous position created by the provisions of the old section, when a person manifestly an under-*raiya* with reference to his homestead could not be ejected as such, because he happened to be a *raiya* with reference to some lands held by him in the same village or a contiguous village even though under a different landlord as held in 13 C. L. J. 255, 21 C. L. J. 475 and other cases. [In 21 C. L. J. 475 it has been held that the provisions of the B. T. Act applicable to a *raiya* would under S. 182 of the Act, regulate

then incidents of the tenancy of the homestead, though the tenant had only the interest of an *under-raiyat* with respect to it and the latter could not be ejected from his homestead under S. 49 of the Act. K was a raiyat of certain holding and it consisted partly of agricultural and partly of homestead land. He let out the homestead portion to J. J. held other lands as a raiyat, not under the same landlord but under a different landlord and in a different village contiguous to his homestead land. In a suit brought by K for ejectment of J. from the homestead land under S. 49 of the B. T. Act, *held* that by virtue of S. 182 of the Act, J could not be ejected under the provisions of S. 49. S. 182 is not applicable where it is established that the land is not used by the raiyat (or under-raiyat) as his homestead and it is not sufficient to show that the character of the land is such as would justify its use as a homestead. (22 C. L. J. 219) It is not, however, necessary that the homestead should be the only residential place of the raiyat (or under-raiyat) in the village. (65 I. C. 504) Whether the homestead of a raiyat (or under-raiyat) is or is not a part of an agricultural holding, the B. T. Act applies to it by virtue either of the general provisions of the Act or of the special provisions contained in S. 182 (46 I. C. 489) But when the defendant has got no holding as a raiyat (or under-raiyat) either in the same village in which his homestead is situated or in any other (contiguous) village, the provisions of S. 182 are not applicable and the incidents of the defendant's tenancy of the homestead land in dispute are not governed by the provisions of the B. T. Act ; and the defendant's tenancy must be considered either as a tenancy-at-will or a tenancy from year to year and as such liable to be terminated on a proper notice to quit. The mere fact of the defendant having constructed a dwelling house on the land in dispute and having been in possession thereof for any length of time will not give them a title to remain on the land permanently (88 I. C. 553).

for his own habitation, but A refuses to vacate. What advice would you give to B, if he approaches you, for opinion ? Give reasons, C.U. 1917(a).

6. Saving of Custom.—Nothing in this Act shall affect any custom, usage or customary rights not inconsistent with, or not (expressly or by necessary implication) modified or abolished by its provisions (S. 183).

Note.—The illustrations to this section have been omitted by the B. T. Amendment Act of 1928 “in view of the general principles adopted regarding transferability and the rights of under-raiyats.” Custom, usage or customary right will prevail over the provisions of this Act, provided the custom, usage or customary right is not inconsistent with them or is not expressly or impliedly modified or abolished by anything in the Act. The Act does not interfere with customs etc. excepting such as are expressly rescinded by it or are clearly inconsistent with its provisions. (Certain customs have been expressly or impliedly modified or abolished by the Act, certain others are inconsistent with it. The custom relating to *abwabs*, for instance, is, expressly abolished.)

APPENDIX I.—Incidents of the various kinds of tenancy.

A—Enhancement of rent.

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| 1. Permanent tenure-holders—
(Ss. 6-7). | Rent of tenure held from the time of Permanent Settlement not <i>liable to enhancement</i> of rent except on proof— | |
| | (a) that the landlord under whom the tenure is held is entitled to enhance the rent either by | |
| | (i) local custom ; or
(ii) by the conditions under which the tenure is held ; or | What are the different classes of tenants dealt with under B. T. A. ? B. L. '13 (b), 29(b). What are the incidents of each class of tenancy ? B.L. 1913 (b). |
| (b) that the tenure-holder by receiving reduction, otherwise than for diminution of area, has subjected himself to the increase demanded and the land is capable of affording it. (S. 6). | | |
| Where liable to enhancement, such rent may, <i>subject to any contract between the parties</i> , be enhanced (a) up to the limit of the customary rate for similar tenancy in the vicinity or (b) where no such customary rate exists—up to such limit as the Court thinks fair and equitable. (S. 7). | | |
| 2. Raiyats at fixed rates— | Not liable to enhancement of rent. | |
| | Their rent may be enhanced— | |
| 3. Occupancy raiyats.—
(Ss. 29-30). | (a) by <i>contract</i> provided—(i) the contract is by a written and registered instrument, (ii) the enhancement is not more than 2 as. in the rupee and (iii) the rent is not enhanced during 15 years from the date of the contract : (S. 29). | |
| | (b) by <i>suit</i> on the following grounds :— | |
| | (i) Rent paid is below the prevailing rate. | |
| | (ii) Rise in the average local prices of staple food crops. | |
| | (iii) Increase in the productive power of land by improvements effected by landlord. | |
| | (iv) Increase of productive power due to fluvial action. (S. 30). | |

4. Non-occupancy raiyats. (S. 43).

Not liable to enhancement except—

- (a) by registered agreement ; or
- (b) by an agreement under Sec. 46 ; or
- (c) on proof of actual payment of rent at the enhanced rate continuously for three years immediately preceding. (S. 45).

5. Under-riyats with occupancy-rights—Same as those of occupancy raiyats : (S. 48G).

5A. Under-riyats with no right of occupancy—

(a) *Money-rent* may be enhanced by a registered contract provided that it shall not exceed more than 4 as. in the rupee except for (i) improvements or (ii) where there have been specially low rates for certain considerations. (Ss. 48-A, 48-B).

(b) *Money-rent* or *produce rent* may be enhanced by the Court, the limit of enhancement when made by the Court being *in the case of money-rent*, one-third of the average-estimated produce of the land for the decennial period preceding the institution of the suit *and in the case of produce-rent* one-half of such produce. [S. 48-D (2)]. When once enhanced there shall be no further enhancement within 15 years from the date of the registered contract or the agreement, as the case may be. (Ss. 48-B (2), 48-D (3))

B.—Ejectment.

State the grounds on which under the B. T. A. a landlord can eject his tenants. B. L. '17(a), 1907.

1. Permanent tenure-holders. (S. 10.)

Liable to ejectment for breaking a condition on the breach of which, he is, under the terms of his contract, liable to be ejected. (In case of contract made *after* the commencement of the Act the condition must be consistent with the provisions of the Act.)

2. Raiyats at fixed rates.—
(S. 18.)

Can be ejected only on the ground that he has broken a condition of his contract (which must be consistent with the provisions of this Act, be it made *before* or *after* its commencement), on breach of which he is according to his contract, liable to be ejected.

3. Occupancy raiyats—
(S. 25.)

Liable to ejectment on the ground—

(a) that he has used the land in a manner which has rendered it unfit for the purposes of the tenancy : or

(b) that he has broken a condition of his contract, (which must be consistent with the provisions of this Act, whether the contract is made *before* or *after* its commencement) on breach of which he is, according to the contract, liable to be ejected.

Upon what grounds may an occupancy raiyat be ejected ?
B. L. '29 (b).

4. Non-Occupancy raiyats.—
(S. 44.)

Liable to ejectment for—

(a) Failure to pay rent.

(b) Misuse of land.

(c) Breach of condition in his contract (which must be consistent with this Act, whether made *before* or *after* its commencement) on breach of which he is liable to be ejected under the contract.

(d) Expiry of the term of the written lease.

(e) Refusal to pay a fair and equitable rent settled under S. 46.

What are the grounds of ejectment of the several classes of raiyats ?
B. L. '13 (a).

What classes of tenants are liable to ejectment for non-payment of rent and what classes are not so liable ?
B. L. 1912(a).

5. 'Under-raiyats,—
(48C & D).

An under raiyat is liable to ejectment :—

(a) if he has failed to pay an arrear of rent ;

(b) if he has used the land in a manner which has rendered it unfit for the purpose of the tenancy or has broken a condition which gives the raiyat a right of re-entry ;

(c) if the term of his written lease has expired ;

(d) if his tenancy has been terminated by a year's notice in the case in which there is no written lease or no term fixed therein, or

(e) if he does not agree to pay the rent determined by the Court as payable by him. Procedure of ejectment on ground (a) is laid down in S. 48D. If an under-raiyat has been admitted in a document by a landlord to have a permanent and heritable right or if he has 12 year's continuous occupation of the land or has a homestead on the land—he shall not be liable to be ejected on ground (c) or (d). Even in cases of other under-raiyats, the landlord will not be entitled to eject on grounds (c) or (d), unless he requires the land for his homestead or for cultivation by himself. (S. 48 C.) In case of ejectment on ground (c) or (d) the under-raiyat may be restored to possession on applying within 4 years if the landlord has not used the land as his homestead or for cultivation by himself etc. (S. 48E).

C.—Transfer.

1. Tenure—	Transferable
2. Holding at fixed rate—	Transferable
3. Occupancy holding—	
4. Non-occupancy holding—	Not transferable except by custom or local usage.
5. Under-raiyati-holding—	Not transferable except with the consent of the landlord. (S. 48 F).

D.—Succession.

Heritable.
Heritable.
Heritable.
Heritable.
(See 41 Cal. 1108)
Heritable (S. 48 F.)

APPENDIX II. A Comparative table of the different Sale Laws.

I. Revenue Sale-law. (Act XI of 1859.)	II. Patni Sale-Law. (Reg. VII of 1819,)	III. Rent Sale-Law. (Bengal Tenancy Act.)
<p>1. If the revenue payable by any estate remains unpaid on the latest day of payment, the Collector (or other officer duly authorised on this behalf) shall issue notifications in the language of the district, to be affixed in his own office and in the Court of the District Judge, specifying the estates or shares of estates which will be sold and the day on which the sale of the same will commence, which day shall not be less than 30 clear days from the date of affixing the notification in the office of the Collector (or other officer as aforesaid) If the Govt. revenue payable by the estate to be sold exceeds Rs. 500, a notification of the sale shall also be published in the official Gazette. The Collector shall further affix a proclamation in the language of the district in his own office, in the Munsiff's court and the police-thanas within</p>	<p>1. <i>Dwadashmahi</i> or first sale.—On the first day of Baisakh, the Zemindar (provided he has, by express stipulation in the pattas, specifically reserved his right to bring the patni to periodical summary sale for arrears of rent) shall present a petition to the Collector specifying the balances due for the expired year from the <i>patni</i> which he intends to bring to sale. The petition shall be stuck up in some conspicuous part of the Collector's <i>kachery</i> together with a notice that if the amount claimed be not paid before the 1st of Jeth following, the tenure of the defaulter will on that day, be sold by public auction. A similar notice shall be stuck up at the Sadar kachary of the Zemindar and a copy or extract of so much of it</p>	<p>1. When a <i>rent</i> decree has been obtained, the decree-holder shall apply [under rule 11 (2) of order 21, C. P. C.] for attachment and sale of the tenure or holding and produce a statement showing the <i>pargana</i>, estate and village in which the tenure or holding is situate, the yearly rent payable for the same and the total amount recoverable under the decree. (S. 162) On receiving the application, the court if it admits the application under O. 21. R. 17 C. P. C. and orders execution of the decree as applied for shall issue a combined order of attachment and proclamation in the prescribed form. The proclamation shall, be published in the following manner :—(a) by beat of drum at some place</p>

Preliminary Procedure.

which the estate or any part of it, is situated, and also at the *kachari* of the *malguzar* or owner of the estate or at some conspicuous place upon the estate forbidding the *raiya*t and under-*raiya*t to pay to the defaulting proprietor any rent which has fallen due after the latest day of payment on pain of not being entitled to credit for the same in their accounts with the purchaser. (S. 7.) In case of—(1) arrears other than those of the current year or of the year immediately preceding, (2) arrears due on account of estates other than that to be sold, (3) arrears of estates under attachment by order of any judicial authority or managed by the Collector in accordance with such order, and (4) arrears due on account of *raik-kavi*, *pubandji* or other demand not being land revenue, but recoverable by the same process as arrears of land revenue,—no estate shall be sold otherwise than after a notification in the language of the district, specifying the nature and

as may be necessary shall be sent to be published at the *kachari* or at the principal town or village upon the land of the defaulter. The notice to be published in the *moffussil* shall be served by a single *peon*, who shall bring the receipt of the defaulter or of his manager for the same, or in the event of inability to procure this, the signatures of three substantial persons residing in the neighbourhood, in attestation of the notice having been published on the spot. In case the people of the village should object or refuse to sign their names in attestation, the *peon* should go to the *kachari* of the nearest *munsiff* or if there be no *munsiff*, to the nearest *thana* and there make a voluntary oath of the due publication of the notice, a certificate to which effect shall be signed and sealed by the said officers and delivered to the *peon*, on or adjacent to the land comprised in the tenure or holding ordered to be sold and by fixing up a copy thereof in a conspicuous place on such land, (b) by affixing a copy thereof in a conspicuous place at the Court house of the issuing Court, (c) by sending in the prescribed form by registered post to the judgment-debtor a concise statement of the order of attachment and proclamation at the time of the issue of the proclamation and (d) in such other manner as may be prescribed. The proclamation shall, in addition to stating and specifying the particular mentioned in rule 66 of order 21, C. P. C., announce (a) in the case of a tenure or a holding at fixed rent, that the tenure or holding will be first put up to auction subject to the registered and notified incumbrances and

amount of the arrears or demand and the latest day on which the payment thereof shall be received, shall have been affixed, for a period of not less than 15 clear days preceding the latest day of payment, in the office of the Collector, in the Court of the District Judge, in the munsiff's Court and at the Police thannas and also at the *kachary* of the malguzar or at some conspicuous place upon the estate, the same to be certified by the peon or other person employed for the purpose. (S 5.)

If it appears from the receipt or attestation that the notice has been published before 15th of Baisakh, the sale shall take place on the 1st of Jeth.

Sash-mahi or mid-year sale.— On the 1st of Kartik, the Zamindar shall present a similar petition with a statement of any balance that may be due on account of the rent of the current year up to the end of Aswin and to cause similar publication to be made of a sale of the tenure of the defaulter to take place on the 1st of Agrahayan, unless the whole of the advertised balance or so much of it as shall reduce the arrear, including any intermediate demand for the month of Kartik, to less than $\frac{1}{4}$ of the total demand of the Zemindar according to the *kistbandi* calculated from the commencement of the year to the last day of Kartik.

will be sold subject to those incumbrances if the same is sufficient to liquidate the amount of the decree and costs and that otherwise it will, if the decree-holder so desires, be sold on a subsequent day of which due notice will be given, with power to annul all incumbrances, and (b) in the case of occupancy holding not held at fixed rate that the holding will be sold with power to annul all incumbrances.

The sale shall not, without the consent in writing of the judgment-debtor, take place until the expiration of at least 30 days from the date on which the copy of the proclamation has been fixed on the land comprised in the tenure or holding ordered to be sold. (S. 163).

I. Revenue Sale-Law.

2. No payment or tender of payment made after the sunset of the latest day of payment, shall bar or interfere with the sale; and no claim to abatement or remission of revenue, unless allowed by Govt. and no private demand or cause of action whatever held or supposed to be held by any defaulter against Govt. shall bar or render void or voidable a sale under the Act: nor shall the plea that money belonging to the defaulter sufficient to discharge the arrear was in Collector's hand shall bar or render void or voidable a sale (i) unless such money stands in the defaulter's name alone and without dispute, and (ii) unless despite the defaulter's timely application or written agreement for the purpose, the Collector shall have neglected or refused on insufficient grounds, to transfer it in payment of the arrear of revenue. (S. 8.) The Collector, however, can, at any time before sale, exempt any estate from sale: and the Commissioner also can

Stay of Sale.

II. Putni Sale-Law.

2. Should the amount claimed by the Zemindar on account of the *putni*-rent remain unpaid on the day fixed for sale, the sale shall take place without reserve, as no sale shall be stayed on any account unless the amount of demand be lodged before the sale.

(i) The Taluqdars of the second decree or any number of them may stay the sale by paying into court the amount of arrears. (ii) They may also lodge money antecedently for eventually answering any demand that may remain due on the day fixed for the sale.

If the amount be rent due, it is to be carried to the account of the tenant lodging it. If not so due, it is to be considered as a loan and the taluk shall be held as a security for the loan.

III. Rent Sale-Law.

2. When an order for the sale of a tenure or holding in execution of a rent decree has been made, the tenure or holding shall be released from attachment, if before it is knocked down to the auction purchaser, the amount of the decree and cost, is paid into court or the decree-holder makes an application for the release of the tenure or holding on the ground that the decree has been satisfied out of court.

Any person having in the tenure or holding advertised for sale an interest which would be voidable upon the sale, can, at any time before it is knocked down to the auction-purchaser, deposit in court, the decretal amount with cost. The money so paid by him will be a mort-

do the same by a special order to the Collector and no sale shall be legal if held after the receipt of such order of exemption.

Any recorded proprietor or co-partner of an estate can deposit with the Collector money or Government securities endorsed and made payable to the order of the Collector and shall sign an agreement pledging the same to the Govt. by way of security for jama of the entire estate and authorising the Collector to apply the same towards the payment of any arrear of revenue due from the estate and not paid before sunset of the latest day of payment. So long as any money or securities sufficient to cover any arrear that may fall due, shall remain and be available, the estate shall be exempted from sale for arrears of revenue.

Any person not being a proprietor of the estate or a share of the estate in arrear, can, at any time before sunset of the latest day of payment deposit with the Collector, the amount of the

In this case the depositor shall have a lien on the taluk, and he shall be entitled to obtain immediate possession of the same in order to recover the amount advanced. The defaulter may recover his tenure by paying to the depositor the entire sum advanced together with interest at 12 p. c. p. a, or upon exhibiting proof in a regular suit that the full amount of advance with interest has been realised from usufruct of the tenure.

gaged debt on the tenure of holding, such mortgage taking priority over every charge on the tenure or holding other than the charge for arrears of rent. The depositor is entitled to possession as a mortgagee until the debt with interest is discharged. If the depositor be an inferior tenant, he may, in addition to any other remedy, deduct the whole or any portion of the amount from any rent payable to his immediate landlord. If the immediate landlord is not the defaulter, he may deduct the money from the rent payable to his landlord and so on until defaulter is reached.

Anjournment of sale—See R. 69, cls. (5) and (2) and also. R. 83, O. 21, C. P. C.

What are the different persons who may under Act XI of 1859 or under Reg. 8 of 1819 protect the property from sale by depositing the arrears due and what are their rights resulting from such payment. C. U. 1915 (b).

I. Revenue Sale-Laws.

arrear of revenue due, to be credited in payment of the arrear at sunset as aforesaid, unless before that time, the arrear shall have been paid by the defaulting proprietor. If the person so depositing be a party in a suit pending before a Court of Justice for the possession of estate from which the arrear is due or of a share thereof he shall be put in temporary possession of the said estate or share. If the person has so deposited the money in order to protect an interest which would be endangered or damaged by the sale, he shall be entitled to recover the amount of the deposit from the defaulting proprietor. If the person has so deposited in order to protect any lien he had on the estate, the amount so credited shall be added to the original lien.

3. Sales shall ordinarily be made by the Collector in the land revenue office at the sadar station of the district. Each sale shall invariably be made on

II. Putai Sale-Law.

III. Rent Sale-Law.

3. When a tenure or holding at fixed rate has been advertised for sale, it shall be put up to auction subject to registered and

3. The sale shall be made in the public katchery and the land shall be sold to the highest bidder

Sale-Procedure.

the day fixed for the same. But in case the Collector be unable, from sickness or from the occurrence of a holiday or from any other cause, to commence the sale on the day fixed for it or if, having commenced it, he be unable from any cause to complete it, he may adjourn it to the next following day, not being Sunday or other close holiday, recording his reasons for such adjournment, forwarding a copy of such record to the Commissioner of Revenue, and announcing the adjournment by written proclamation stuck up in his kachari and so on from day to day, until he shall be able to commence or to complete the sale. (S. 20.)

On the day of sale, sales shall proceed in regular order, the estate bearing the lowest number in the *Tamji* being put up first and so on in regular sequence.

Whenever a separated share shall become liable to sale for arrears of revenue, the Collector shall in the first place, put up to sale only that share from which, according to the

At the time of sale the notice previously stuck up in the Collector's kachery shall be taken down and the lots are to be called up successively in the order in which they may be found in that notice. A person shall attend on the part of the Zemindar with a particular statement of the payments made up to the day of sale, on account of the balance of each advertised lot together with the receipt for, or certificate of, the notice to be published in the *moffussil*. No sale can take place until the statement produced shall have been inspected and the existence of a balance for the year ascertained and until the receipt or certificate of due publication is read. (The observance of these forms shall be recorded in a separate *rubkari* to be held upon each lot sold.)

In the case of the *mid-year*

notified incumbrances; if the bidding reaches a sum sufficient to liquidate the amount of the decree and costs, the tenure or holding shall be sold subject to such incumbrances. (S. 164.) But if the bidding does not reach a sum sufficient to liquidate the amount of the decree and costs and if the decree-holder thereupon desires that the tenure or holding be sold with power to avoid all incumbrances, the officers holding the sale shall adjourn the sale and make a fresh proclamation announcing that the tenure or holding will be put up to auction and sold with power to avoid all incumbrances upon a future day specified therein not less than 15 and not more than 30 days from the date of the postponement and upon that day, the tenure or holding shall be put up to auction and sold with power to

I. Revenue Sale-Law.

separate accounts, all arrear of revenue may be due. If the highest offer for the share exposed to sale be not equal to the amount of arrear due, the Collector shall stop the sale and shall declare that the entire estate will be put up to sale at a future date, unless the other recorded sharer or sharers shall, within 10 days, purchase the share in arrear by paying to Government the whole arrear due from such share. If no such purchase be made within 10 days as aforesaid, the entire estate shall be, sold after due publication of notices as required by the Act.

4. Any person can bid and purchase at the sale, Government shall purchase at Re 1 if there be no bid at all or at the highest amount bid if the same be less than the arrears accruing due up to the date of sale,

II. Putai Sale-Law.

salik, the kistbandi of the defaulter shall also be produced in order that it may be seen that the balance remaining unpaid exceeds $\frac{1}{4}$ of the demand upto the date of sale. No sale shall take place unless this be ascertained.

III. Rent Sale-Law.

to avoid all incumbrances. (S. 165) When an occupancy holding not held at fixed rate has been advertised for sale, it shall be put up to auction and sold with power to avoid all incumbrances. (S. 166).

4. Every one excepting the actual defaulter is free to bid. The Zamindar himself can bid and so can under-tenant of the defaulter.

4. The decree-holder may, without permission of the court, bid for or purchase the tenure or holding (Cf. R. 12, O. 21 C. P. C.) The judgment-debtor shall not bid for or purchase a tenure or holding so sold. If the judgment-debtor purchases the property either by himself or

Who can bid.

I. Revenue Sale-Law.

5. The purchaser shall immediately deposit 25 p. c. of the purchase-money; in default, the property shall again be put up and sold forthwith. The balance of the purchase-money shall be paid before sunset of the 30th day from the day of sale (reckoning the day of sale as one of the thirty days). In default of payment of the balance, the deposit shall be forfeited and the estate shall be re-sold after due publication of notice and in the event of the proceeds of the re-sale being less than the amount bid for by the defaulting purchaser, he will have to make up the difference. The notice of resale, however, shall not be published until three clear days have expired from the date of default. Within these three days of

Deposit of purchase money.

II. Putni Sale-Law.

5. 15 p. c. of the purchase money shall be paid immediately the lot is knocked down. If the 15 p. c. be not paid within 2 hours, the lot shall be re-sold on the same day. The balance of the purchase-money shall be paid by noon of the 8th day. If on noon of the 8th day, the remainder of the purchase-money remain unpaid, the *putni* shall be resold on the following day, at the risk of the first purchaser who shall forfeit the 15 p. c. advanced and be further liable for any sum by which the proceeds of the second sale falls short of the antecedent one.

III. Rent Sale-Law.

through another (*i.e.* benami) the sale may be set aside, on the application of the decree-holder or any other interested party. (S. 173.)

5. The purchaser shall pay immediately a deposit of 25 p. c. on the amount of the purchase-money. If such deposit is not immediately made, the property shall forthwith be resold. (R. 84, O. 21. C. P. C.)

The balance of the purchase-money shall be paid before the court closes on the 15th day from the sale of property, (R. 85, O. 21. C. P. C.) In default of payment within the specified period, the deposit may, if the court thinks fit, after defraying the expenses of the sale, be forfeited to the Government and the property shall be resold. (Sr.

86 & 81, O. 21, C. P. C.)

I. Revenue Sale-Law.

grace, the former (defaulting) proprietor may stay the sale by payment of the arrears

6. When the full purchase-money is paid up, the sale becomes final and conclusive (a) where no appeal is preferred, at the noon of the 60th day from the date of sale, (b) where an appeal has been preferred and dismissed—from the date of dismissal of the appeal if such date be beyond the 60th day; otherwise at the noon of the 60th day from the date or sale as above.

Immediately upon the sale becoming final and conclusive, the Collector shall give to the purchaser a certificate of title in the prescribed form and shall notify such transfer by written proclamation in his own office and in the court of the munsiff and the police thana within whose jurisdiction any part of the estate sold is situate, The Collector

II. Putni Sale-Law

6. An soon as the entire purchase-money is paid by the purchaser, he shall receive from the officer conducting the sale a certificate of such payment. The purchaser shall then proceed with the certificate to procure a transfer to his name in the *khairat* of the *Zamindar* and upon furnishing security, if required, he shall receive the usual *amalgat* or order for possession together with a notice to the raiyats and others to pay their rents henceforward to him. If the *Zamindar* refuses to give the order for possession, notwithstanding the security tendered, the purchaser may apply direct to the Court and he shall

III. Rent Sale-Law.

6 Where no application is made for setting aside the sale or where such application is made and disallowed, the court shall make an order confirming the sale and thereupon the sale shall become absolute, (S. 174 A).

Where the sale becomes absolute, the court shall grant a certificate specifying the property sold and the name of the purchaser. The certificate shall bear the date on which the sale becomes absolute. The property, however, is vested in the purchaser from the date of confirmation of the sale and not from the date of the sale (Cf. S. 65, C P, C)

Confirmation of sale and delivery of possession to the purchaser.

I. Revenue Sale-Law.

shall also order delivery of possession of the estate to the purchaser by removing any person who may refuse to vacate the same and by proclamation to the occupant of the property by beat of drum or in any other customary mode at some convenient places and by affixing a copy of the certificate at the *malkachary* or in some conspicuous place of the estate.

The title of the purchaser dates from the day after that fixed as the latest day of payment and the purchaser shall be answerable for all instalments of the revenue falling due after the said day.

7. The purchase money shall be applied by the Collector—(a) to the liquidation of all arrears due on the latest day of payment, (b) to the liquidation of all outstanding demands debited to the estate in the public accounts of the district; (c) the surplus, if any, is to be paid to the late pro-

II. Putni Sale-Law.

receive the order for possession and shall be put up in possession of the lands by the Nazir in the same manner as possession is obtained under a decree of Court. If any opposition is offered, the purchaser shall apply immediately to the Civil Court for the aid of public officers in obtaining possession of his rights. In case of continued opposition or should there be apprehension of breach of the peace, the aid of police-officers shall be given to such purchaser.

7. The sale-proceeds shall be disposed of in the following way :—*First*, i. p.c. of the sale-proceeds should go to Government. *Secondly*, the Zemindar gets the amount due to him with costs. [But no antecedent balances beyond those of the

III. Rent Sale-Law.

Procedure for delivery of possession to purchaser—
Vide Rr. 95-103, O. 21, C. P. C.

7. The proceeds of a sale [other than a sale in execution of a decree in a suit under S. 148-A (1)*] should be disposed of in the following way :—

*As to Rules for disposal of proceeds of sale in execution of a decree in a suit under S. 148 A (1) See Notes under S. 169 ante.

Disposal of sale proceeds.

I. Revenue Sale-Law.

II. Putni Sale-Law.

III. Rent Sale-Law.

prietor or proprietors, according to their shares, if recorded or on their joint receipt if not recorded. [The said surplus purchase money may be taken by private creditors under order of a civil court, otherwise not.]

current year (in case of mid-year sale) or those of the year immediately expired (in case of First Sale) shall be deducted from the sale-proceeds.] *Thirdly*, the balance of the purchase-money shall be kept in deposit in the Collectorate to answer claims of subordinate tenure-holders and the assignees of the defaulters. *Lastly*, should no claims upon such balance of the purchase money be made by a regular suit by any darpatnidar or assignee within 2 months from the date of sale, or should the amount claimed be less than the deposit, the defaulter will get the surplus, on applying for the same.

(a) the costs of the sale shall be paid to the decree-holder. (b) Then, the decretal amount shall be paid. (c) Then, if there is any balance, the cost of any application under S. 169 and the rent due to the decree-holder between the institution of the suit and the confirmation of the sale shall be paid. (d) The balance, if any, should be paid to the judgment-debtor on the expiry of 2 months from the confirmation of the sale unless the court for reasons to be recovered in writing otherwise directs, (S. 169).

8. (i) In any case of an appeal from a revenue sale, it is competent to the Commissioner of Revenue on the

8. Any party desirous of contesting the right of the Zemindar to make the sale,

8. (a) A judgment-debtor or any person where interest is affected by the sale may, under

Setting aside of sale.

I. Revenue Sale-Law.

ly under the proprietors of estate and duly registered under the Act.

(4) Leases of land whereon dwelling houses, manufactories, or other permanent buildings have been created or wherein gardens, plantations, tanks, wells, canals, places of worship, or burning or burying grounds have been made or wherein mines have been sunk. [But the rents of such leases shall be liable to enhancement on proof that the lease has been held at what was originally an unfair rent and not held at a fixed rent, equal to the rent of a good arable land, for a term exceeding 12 years. The purchaser is not entitled to eject an occupancy raiyat at a fixed rent or rate of rent, or to enhance the rent of such raiyat otherwise than in the manner prescribed by the law in force or otherwise than the former proprietor may have been entitled by law.]

(B) The purchaser of an estate in

II. Putni Sale-Law.

khajast raiyat nor to cancel bonafide engagements made with such tenant or his representative except that their rent may be enhanced by suit on proof that higher rate would have been demandable at the time of such engagement.

III. Rent Sale-Law.

nised by the settlement proceedings of any current temporary settlement as a tenure at a rent fixed for the period of that settlement.

(c) Any lease of land whereon dwelling-houses, manufactories or other permanent buildings have been created or permanent gardens, plantations, tanks, canals, places of worship or burning or burying grounds have been made.

(d) Any right of occupancy.

(e) The right of a non-occupancy raiyat to hold for 5 years at a rent fixed under Ch. VI by a court or under Ch. X by a Revenue Officer.

(f) Any right conferred on a raiyat to hold at a rent which was fair and reasonable at the time the right was conferred.

(g) The right of a raiyat

districts not permanently settled, acquires the estate free from all incumbrances imposed upon it after the time of the Settlement and is entitled to avoid and annul (i) all tenures originating with the defaulter or his predecessors, as well as (ii) all engagements with the raiyats or the like, settled subsequent to the last settlement and also (iii) all tenures which the first engagor may, under the conditions of his settlement have been competent to set aside, alter or renew, except only the following :—Leases of land whereon dwelling houses, manufactory or other permanent buildings have been erected or whereon gardens, plantations, tanks, canals, wells, places of worship or burning or burying grounds have been made or wherein mines have been sunk which were protected so long as the lands were duly appropriated to these purposes.

[The purchaser, however, is not entitled to demand a higher rate of rent

at fixed rates to hold at the fixed rent or rate of rent.

(g) Any right or interest which the landlord at whose instance the tenure or holding is sold or his predecessor-in-interest has expressly and in writing given the tenant for the time being permission to create.

When an *occupancy holding* not held at a fixed rate is put up for sale, it is at the very first instance sold with power to avoid all incumbrance on the holding (excepting of course those that are called "protected interests" in the Act). But where a *tenure* or a *raiyyati holding at fixed rate* is put up for sale, it is at the first instance sold subject to "the registered and notified incumbrances," (i. e. incumbrances created by registered instruments and notified to the landlord not

I. Revenue Sale-Law.

than was demandable by the former proprietor, from the holder of such annulled tenures, unless (i) such persons may have held their lands at a lower rate of rent than was justly demandable for the land or (ii) unless it was shewn that according to the custom of the *pargana, mohra* or other local division, such persons are liable to be called upon for any new assessment.]

(C) (a) Any recorded or unrecorded proprietor or co-partner (excepting sharers with whom the Collector ~~was~~ under the Act opened separate accounts under secs. 10-11) who may purchase the estate of which he is proprietor or co-partner or who by re-purchase or otherwise may recover possession of the said estate, after it has been sold for arrears and like wise (b) any purchaser of an estate sold for arrears or demands other than those accruing upon itself, shall acquire the estate subject to all its incumbrances existing at the time of the sale and without any rights in respect of under tenants or raiyats not possessed by previous proprietor at the time of the sale.

(D) The purchaser of a share or shares of an estate sold for arrears of revenue acquires the share or shares subject to all incumbrances and does not acquire any rights not possessed by the previous owner.

II. Putni Sale-Law.

III. Rent Sale-Law.

less than 3 months before the accrual of the arrear for which the sale takes place) if any, and the "protected interests," provided the bidding reaches a sum sufficient to liquidate the decretal amount and the costs. The purchaser in such a case may avoid any incumbrance on the tenure or holding excepting the "protected interests" and the "registered and notified incumbrances." If the bidding does not reach a sum sufficient to liquidate the decretal amount with costs, the tenure or holding may be sold at a subsequent date with power to avoid all incumbrances and the purchaser in such a case may avoid all incumbrances (excepting "the protected interests").

